APPENDIX A

CITY OF ST. JOSEPH
BERRIEN COUNTY, MICHIGAN

AN ORDINANCE TO AMEND THE ZONING ORDINANCE OF
THE CITY OF ST. JOSEPH, MICHIGAN

THE CITY OF ST. JOSEPH ORDAINS:

The Zoning Ordinance of the City of St. Joseph, Michigan, is hereby amended by adding the following Section 9.7 to Article IX of the Ordinance:

"SECTION 9.7 "EB-OD" EDGEWATER BEACH OVERLAY DISTRICT

9.7.1 Intent. The Edgewater Beach Overlay District (EB-OD) is an overlay District intended to preserve the character of the public trust land along the shore of Lake Michigan, which is found to be a valuable public resource of the community, to prevent damage to the public trust land and to prevent damage to private property.

Based on the record presented the City finds that during periods of low Lake Michigan water levels, sand accretion in this District tends to significantly enlarge the beach and to enlarge affected parcels in this District. This additional land area can be seen by property owners as permanent and attractive for development. The character of the public trust land along the Lake Michigan shoreline, as well as viewsheds along the shoreline from public parks included in and adjacent to this District, is compromised by development in immediate proximity to the public trust land.

Based on the record presented the City further finds that the beach and property area near the shoreline is subject to submergence and erosion during periods of higher Lake Michigan water levels and resulting from weather conditions. It has been demonstrated that current state and federal development standards for the Lake Michigan shoreline, such as the Ordinary High Water Mark (OHWM) and the Base Flood Elevation, do not ensure that property shoreward of those locations is protected from erosion, inundation, or damage during such periods of time and/or weather events. The OHWM is not intended to reflect these periods of peril, and the Base Flood Elevation is a still water elevation that does not take into account the effect of wave action. The City further understands that revised federal floodplain regulations are being developed to take into account additional environmental factors such as waves and to provide an improved standard of floodplain development protection, but implementation of these regulations will not likely occur for several years.

When erosion threatens a Structure legally built near the shoreline, a natural reaction for the owner is to attempt to construct a seawall or implement similar shore protection measures. Shore protection measures in this District would diminish significantly the character of the public trust land and pose an increased threat of erosion and damage to the public trust land as well as to adjacent private property.

The City has long experience with the detrimental effects of seawalls and shore protection structures constructed over a period of many years in response to erosion south of the St. Joseph River. These shore protection structures were and are necessary to protect previously developed areas of the City which are otherwise subject to regular and ongoing erosion. However, given the physical, environmental, and developmental characteristics of the EB-OD, including generally large lots which need not be developed near to the water's edge to be economically viable and that the area is generally benefitting from accretion rather than persistent erosion, the City believes that shore protection measures should not be necessary in this area and would be detrimental to the public health, safety and welfare for reasons further identified and set forth in the City of St. Joseph, Michigan Coastal Engineering Study, dated August 17, 2012, a copy of which is on file with the City.

The City believes the most appropriate, effective and reasonable method to further the public interests of protecting natural resources; preserving the economic and environmental well-being of the community; to protect the health, safety and general welfare of the community; and the general preservation or enhancement of property values is to restrict the construction of structures so near to the water's edge as to be detrimental to the character of the public trust property and/or the vistas from neighboring public parks; and/or to be susceptible to damage resulting from inundation or erosion or to create an apparent future need for seawalls or other shore protection measures in order to protect these structures from damage resulting from inundation or erosion; and/or to be potentially built in a location that will render the structure nonconforming under the future federal floodplain protection regulations currently under development.

These regulations are intended to preserve the character of the public trust property along the shoreline, protect the vistas from neighboring public parks, and prevent the construction of structures and shore protection measures which would have deleterious effects on the public trust property as well as neighboring private property.

These regulations are also supported by the Comprehensive Plan, as the Future Land Use Map indicates lakefront property in this area should be used as open space and the supporting text indicates that open space areas should be maintained and encouraged along the shoreline.

9.7.2 Description of District. The EB-OD includes all lands in any zoning District located north of the St. Joseph River and situated lakeward of a line sequentially connecting the following points described by Michigan State Plane Grid Coordinates, South Zone, Grid, NAD 83, U.S. Survey Feet and as illustrated in Map 9-3, Area of Edgewater Beach Overlay District:

Point	Northing	Easting
A	231408.65'	12547511.47'
B	231835.41'	12547625.92'
C	232647.21'	12548673.22'
D	232952.85'	12549032.86'
E	233537.35'	12549657.47'
F	233846.96'	12549969.52'
G	234468.24'	12550591.09'
H	234820.85'	12550921.86'

9.7.2.1 Area of Edgewater Beach Overlay District

Map 9-3 Area of Edgewater Beach Overlay District

9.7.3 Structure Development. For the reasons set forth in Subsection 9.7.1 and elsewhere in this Ordinance, the installation, construction and operation of Structures, which for the purpose of this section includes seawalls and shore protection measures, within the EB-OD shall be subject to the following:

A. No Structure shall be installed or constructed in the EB-OD. The following are not considered a Structure for purposes of this section only:

1. Public recreational equipment in public parks;
2. Open, unroofed walkways, including those constructed of pavers or similar objects;
3. Stairs and similar open, unroofed structures that are set on the surface of the ground and which are not attached to a Structure; and
4. Freestanding signs.

B. In the event the provisions of the EB-OD prevents the development or use of a Lot existing on the effective date of this amendment for the purposes permitted in the Zoning District, or creates practical difficulties or unnecessary hardship for the use of such a Lot, the property owner may seek a Hardship Planned Unit Development under the terms of this Ordinance for lands within the EB-OD or a Hardship Planned Unit Development or Variance for lands adjacent to the EB-OD.

C. If any Lot within or partially within the EB-OD is divided or the subject of a boundary adjustment after the effective date of this amendment such that any resulting parcel is nonbuildable due to the regulations of this section, except for a boundary adjustment that has the effect of lessening a Nonconformity with respect to this section, it will be deemed a voluntary action of the property owner and will disqualify the resulting nonbuildable parcel from receiving a Variance or Hardship Planned Unit Development.

D. In the event the provisions of the EB-OD render Nonconforming any Structure which is existing or which is the subject of a valid building permit and under construction on the effective date of this amendment, this shall not be deemed a voluntary action of the property owner and will not disqualify the parcel from receiving a Hardship Planned Unit Development under the procedures described in this Ordinance for lands within the EB-OD or a Hardship Planned Unit Development or Variance if on lands adjacent to the EB-OD.

E. Variances shall not be permitted within the EB-OD.

F. To the extent of any conflict between the regulatory provisions contained in this section and other provisions of the Zoning Ordinance, the restrictions contained in this section shall control.

This ordinance shall take effect 10 days after its final passage.

The Mayor and Clerk of the City of St. Joseph, Berrien County, certify that this ordinance was passed by the St. Joseph City Commission on November 5, 2012, and that notice of its adoption or a copy of the ordinance was published in *The Herald-Palladium* newspaper on November 8, 2012.

ROBERT L. JUDD, Mayor

Deborah S. Koroch

DEBORAH S. KOROCH, Clerk

BLOOM SLUGGETT MORGAN

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August 19, 2012

Robert L. Judd, Mayor
City Commission
City of St. Joseph
City Hall
700 Broad Street
St. Joseph, MI 49085

Re: Coastal Study Review and Implementation

Dear Mayor Judd and Members of the City Commission:

The City of St. Joseph ("City") has asked for our opinion concerning the legality of adopting and enforcing potential new ordinances regulating designated areas of the Lake Michigan shoreline, specifically with regard to setbacks and the construction of shoreline protection structures.

In preparing this opinion, we have reviewed the report and recommendations for shoreline management prepared by the City's consultants. It is our understanding after reviewing the "St. Joseph Coastal Study" ("Report") that the City's consultants are recommending separating the Lake Michigan shorefront into three distinct areas based on identifying characteristics: Area 1 (Jean Klock Park to North Pier), Area 2 (South Pier to the St. Joseph Water Plant), and Area 3 (St. Joseph Water Plant South to City Limits). The consultants have recommended the following:

- Area 1: An ordinance (proposed by the City to be a zoning ordinance amendment) prohibiting all structures, including shoreline protection structures (i.e., seawalls or similar structures), within a fixed setback of 130' to 180' (depending on location) landward of the statutory ordinary high water mark.
- Area 2: An ordinance establishing the location where shoreline protection structures may be constructed, and setting forth certain design standards (e.g., stone revetment) for such structures.
- Area 3: No ordinances are proposed for this area because no further regulation is recommended.

In the course of its review of these recommendations, an assertion was made to the City that such regulations would constitute a "taking" of private property by, presumably, unduly restricting the ability of a property owner to develop or protect his or her property. The remainder of this letter addresses this and similar issues.

Initially, it must be noted that as of the date of this letter, the only proposed ordinance language that we have reviewed is a draft ordinance amending the City's Zoning Ordinance to add Section 9.7, entitled "EB-OD" Edgewater Beach Overlay District. We previously provided our comments and revisions regarding the proposed ordinance language to the City, and our opinion, as expressed in this letter, is based in part on the proposed language. Our opinion is subject to change depending upon the language that is actually proposed or adopted by the City (whether it be a zoning ordinance, regulatory ordinance or both), or if the facts conveyed to us are later discovered to be incomplete or incorrect.

I. PRELIMINARY ISSUES

A. General Authority to Adopt Local Ordinances

As a home rule city, the City has broad powers under the Michigan Constitution to enact ordinances for the benefit of municipal concerns. Const. 1963, art. 7, §§ 22. The Home Rule City Act ("HRCA"), MCL 117.1 *et seq.,* further defines the authority of cities to enact and enforce local ordinances. Laws (such as the HRCA) that concern local governments "shall be liberally construed in their favor." Const. 1963, art. 7, §§ 34.

"Among the powers that may properly be exercised by a home rule city is the police power." *Belle Isle Grill Corp v Detroit*, 256 Mich App 463, 481; 666 NW2d 271 (2003); see also MCL 117.3(j) (requiring city charters to include provisions for the "public peace and health and for the safety of persons and property"). It is clear that the City has the authority to enact ordinances for the public health, safety, and welfare of its citizens.

Zoning regulations constitute a valid exercise of governmental authority when they have a rational relation to the public health, safety, welfare and prosperity of the community. *Comer v City of Dearborn,* 342 Mich 471, 477; 70 NW2d 813 (1955); see also MCL 125.3201 (authorizing a local unit of government to adopt zoning ordinances regulating the use of land and structures "to promote public health, safety, and welfare"). The Michigan Zoning Enabling Act, being MCL 125.3201 *et seq*., ("MZEA") specifically allows a local unit of government to regulate land development "to achieve specific land management objectives and avert or solve specific land use problems, **including the regulation of land development and the establishment of districts in areas subject to damage from flooding or beach erosion**." MCL 125.3201(3) (emphasis added).

Michigan courts further recognize that local governments are generally permitted to regulate water or riparian rights (such as the right to erect docks and moor boats) as part of their zoning power. *Twp of Yankee Springs v Fox,* 264 Mich App 604, 606; 692 NW2d 728 (2005). In fact, the Michigan Supreme Court has recognized that in order to accomplish the goals of zoning, riparian rights cannot be excluded:

> In a state such as Michigan, with its abundant bodies of water, there would be no way to ensure that land uses are compatible with surrounding properties unless water activities are evaluated. Similarly, the conservation of natural resources, which clearly includes water, cannot be undertaken if there is no means for

regulating riparian rights. [*Hess v W Bloomfield Twp*, 439 Mich 550, 563; 486 NW2d 628 (1992).]

The Court has recognized that by granting the authority to municipalities to promote the public health, safety, and general welfare through enactment of zoning ordinances, the Legislature was complying with a "*constitutional mandate* to protect the environment, including bodies of water, from impairment or destruction." *Id.* at 564 (emphasis added).[1]

Thus, in our opinion, the City has the authority to adopt local ordinances—both police power and zoning ordinances—that promote public health, safety, and welfare, even if the ordinances impact riparian rights or other property rights of lakeshore owners.

As indicated, we have reviewed a proposed Zoning Ordinance amendment that would be applicable to Area 1. We understand that the City may be considering a stand-alone police power ordinance that would be applicable to Area 2; however, we cannot express an opinion at this time regarding whether the proposed regulations for Area 2 are more properly considered zoning or police power ordinances,[2] as we have not reviewed any proposed language. ("The question whether or not a particular ordinance is a zoning ordinance may be determined by a consideration of the substance of its provisions and terms, and its relation to the general plan of zoning in the city." *Square Lake Hills Condo Ass'n v Bloomfield Twp*, 437 Mich 310, 233; 471 NW2d 321 [1991].)

B. Ordinary High Water Mark

Because the Report's recommendations implicate the statutory ordinary high water mark ("OHWM"), a brief discussion of the OHWM is relevant.

The OHWM constitutes the limit of the Department of Environmental Quality's ("DEQ's") jurisdiction under Part 325 of the Natural Resources Environmental Protection Act ("NREPA"), MCL 324.32501 *et seq.*[3] Thus, the DEQ has jurisdiction to require permits under Part 325 concerning lands "lying below and lakeward of the natural ordinary high-water mark...." MCL 324.32502.

In the recent case of *Burleson v Dep't of Environmental Quality*, 292 Mich App 544, 549; 808 NW2d 792 (2011), the Michigan Court of Appeals affirmed that the scope of the DEQ's regulatory authority under Part 325 is set by the statutorily-defined elevations. For example, the

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[1] Article 4, §52 of the Michigan Constitution states:

> The conservation and development of the natural resources of the state are hereby declared to be of paramount public concern in the interest of the health, safety and general welfare of the people. The legislature shall provide for the protection of the air, water and other natural resources of the state from pollution, impairment and destruction.

[2] Zoning ordinances are generally recognized as such if they regulate the use of land and buildings according to districts, areas, or locations. In contrast, an ordinance that regulates an "activity" is generally considered a police power ordinance. *Square Lake Hills Condo Ass'n v Bloomfield Twp*, 437 Mich 310, 323-25; 471 NW2d 321 (1991).

[3] Part 325 of NREPA is sometimes referred to as the Great Lakes Submerged Lands Act, or GLSLA. It regulates the use of land below or lakeward of the statutorily-defined ordinary high water mark.

OHWM for Lake Michigan is statutorily set at 579.8 feet of elevation above sea level. MCL 324.32502. Thus, for example, when the water recedes below the OHWM, the riparian owner may not generally place any permanent structures or do any dredging or filling on that land without a permit from the DEQ. Part 325; OAG, 1977-1978, No. 5327.

The OHWM should not be confused with the common law natural ordinary high water mark ("NOHWM") discussed in *Glass v Goeckel*, 473 Mich 667, 683; 703 NW2d 58, 67 (2005). In *Glass,* the Court held that the boundaries of the public trust are not limited by the statutory elevations in MCL 324.32502. Instead, the public trust (which permits, for example, pedestrians to walk along the Great Lakes) extends to the common law NOHWM, which the Court defined as where "the presence and action of the water is so continuous as to leave a distinct mark either by erosion, destruction of terrestrial vegetation, or other easily recognized characteristic." *Id.* at 674.[4] The NOHWM would generally need to be determined on a property-by-property basis.

Because the statutorily-defined OHWM differs from the common law NOHWM, the City should use caution in incorporating one or both terms into its ordinances so that the City's intent is clear from the chosen language. In addition, the OHWM used in the Coastal Engineering Study ("Study") is 580.5 feet, which is different from the statutory OHWM of 579.8 feet in MCL 324.32502.[5] Thus, for clarity's sake, we recommend that any references to an OHWM in the ordinance(s) be clearly defined. Further, to the extent the City chooses to reference a NOHWM in one or more of the ordinances, the City must be aware that the NOHWM varies and that the location of the NOHWM on a particular property may be subject to debate.[6]

C. Preemption

Because the OHWM delineates the primary landward limit of the DEQ's permit jurisdiction, it raises a question as to whether a local ordinance intended to regulate land between the OHWM and the water's edge would be preempted (i.e., precluded) by state law. (This issue does not arise with regard to an ordinance that applies only to property landward of the OHWM.)

In Michigan, a municipality may not enact an ordinance if (a) the ordinance directly conflicts with the state statutory scheme, or (b) the state statutory scheme preempts the ordinance by occupying the field of regulation, even where there is no direct conflict between the two schemes of regulation. *Frericks v Highland Twp*, 228 Mich App 575, 585-86; 579 NW2d 441, 447 (1998). In that regard, preemption may be established "(1) where state law is expressly preemptive; (2) by examination of the legislative history; (3) by the pervasiveness of the state regulatory scheme, although this factor alone is not generally sufficient to infer preemption; or

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[4] The State of Michigan holds in trust the navigable waters of the state in behalf of its citizens, and riparian owners hold "the right to use and enjoy" their riparian property "subject to the public right of navigation...." *Hall v Alford,* 114 Mich 165, 167; 72 NW 137 (1897). "As trustee, the state must preserve and protect specific public rights below the ordinary high water mark and may permit only those private uses that do not interfere with these traditional notions of the public trust." *Glass v Goeckel,* 473 Mich 667, 694; 703 NW2d 58 (2005).

[5] The Study uses 580.5 feet as the OHWM based upon DEQ Guidance Document No. 325-06-02, which provides a conversion between IGLD 1955 (utilized in MCL 324.32502) and IGLD 1985 (utilized in the study).

[6] "[I]t is abundantly clear that 'the precise location of the ordinary high water mark at any given site on the shores of our Great Lakes remains a question of fact.'" *United States v Marion L Kincaid Trust*, 463 F Supp 2d 680, 694 (ED Mich, 2006), quoting *Glass, supra* at 694.

(4) where the nature of the subject matter regulated demands exclusive state regulation to achieve the uniformity necessary to serve the state's purpose or interest." *Id.* at 585-586.

We have not located any appellate court decisions addressing whether local units of government have concurrent jurisdiction involving the Great Lakes with the DEQ lakeward of the OHWM or whether local ordinances pertaining to such land are preempted. However, in our opinion, a court would likely find that such a local ordinance is not preempted as a matter of law.

Part 325 is not expressly preemptive in that nothing in the statutory scheme expressly prohibits a local unit of government from adopting or enforcing local ordinances regulating land, uses or activities that that fall within the scope of the state's regulatory jurisdiction. In fact, the state administrative rules promulgated under NREPA state that the DEQ "may require such permit conditions as it deems reasonable and necessary to protect the public trust and private riparian interests, including any of the following conditions:...(e) That the project be in compliance with local zoning ordinances." R 322.1011(1)(e). In addition, the rules explicitly state that the issuance of a permit under Part 325 (i.e., for a seawall, bulkhead, or other permanent revetment structures) "does not obviate the necessity of receiving approval from the United States army corps of engineers and, where applicable, other federal, state, or local units of government." R 322.1011(4).

Furthermore, the types of regulations recommended in the Report would not be preempted as a matter of law by federal law. Under federal law, the Great Lakes are considered navigable waters. 33 CFR § 328.3(a)(3). The federal government's jurisdiction over the Great Lakes (in the absence of adjacent wetlands) "extends to the ordinary high water mark", 33 CFR § 328.4; *United States v Rands*, 389 US 121, 123 (1967). The federal regulations define the "ordinary high water mark" as:

> that line on the shore established by the fluctuations of water and indicated by physical characteristics such as clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas. [33 CFR § 328.3(e).]

While we believe local regulations that interfere with the federal navigational servitude may be preempted, it does not appear on the face of the Report that the regulations recommended in the Report would interfere with the construction or maintenance of federal navigational structures such as piers. Further, in our opinion, because the federal and state laws represent a coordinated effort between the state and federal government, and because the state law allows for more restrictive regulations on the local level, federal law does not *per se* preempt local regulation of the Lake Michigan shoreline.

In fact, the Coastal Engineering Manual published by the Army Corps of Engineers ("ACOE") recognizes several alternatives for shore protection, including but not limited to armoring (i.e., seawalls, protective revetments) and the "do nothing" approach. The ACOE manual states that "[n]ational plans for beach management and shore protection do not exist" and that each project must consider several factors, including but not limited to public health, safety and social well-being, community cohesion, and state, regional and *local* plans for coastal zones.

The ACOE manual recognizes that "[s]everal states have established construction setback lines to reduce damage in areas subject to coastal erosion and shoreline retreat." Further, as stated in the manual:

> Some states (North Carolina, Maine) have passed laws banning the use of armored structures (seawalls, bulkheads, revetments) and shore protection on their ocean coasts. South Carolina only bans armored structures and other coastal states are considering similar laws. Florida and California have adopted sand mitigation policies and procedures to permit seawall construction but require the annual placement of sand to compensate for that trapped behind the structure.

The ACOE manual does not suggest in any way that these types of state regulations are preempted by federal law, nor does it suggest that similar local regulations would be preempted by federal law.

Based on the above, it our opinion that a local ordinance regulating land, use or activities between the OHWM and the water's edge would not be preempted as a matter of law. Whether a specific ordinance would be preempted for the reason that it creates a direct conflict with state or federal law would need to be determined after a review of the proposed ordinance language.

II. CONSTITUTIONAL ISSUES

As discussed above, one issue already raised is whether the recommended regulations could withstand constitutional scrutiny. Below is our analysis of the proposed regulations under the three primary types of constitutional challenges to land-use ordinances.

At the outset, it is important to note that all ordinances are presumed to be constitutional and are construed so unless their unconstitutionality is clearly apparent. *Kenefick v City of Battle Creek,* 284 Mich App 653, 654-655; 774 NW2d 925 (2009). "The foundation for this presumption is our recognition that elected officials generally act in a constitutional manner when regulating within their particular sphere of government." *Truckor v Erie Twp,* 283 Mich App 154, 162; 771 NW2d 1 (2009). Thus, the party challenging the ordinance has the burden of rebutting the presumption that the ordinance is constitutional. *Id.* The Michigan Court of Appeals has recognized that zoning ordinances come clothed "with every presumption of validity." *Adams Outdoor Advertising, Inc v City of Holland,* 234 Mich App 681, 692; 600 NW2d 339 (1999).[7]

A. Substantive Due Process

Both the United States and Michigan Constitutions guarantee that no state shall deprive any person of "life, liberty or property, without due process of law." *People v Sierb*, 456 Mich 519, 522; 581 NW2d 219 (1998). The due process provisions encompass procedural fairness, but also have a substantive component that protects individual liberty and property interests

[7] See also *Rental Prop Owners Ass'n of Kent Co v Grand Rapids,* 455 Mich 246, 253; 566 NW2d 514 (1997) ("enforcement of ordinances related to municipal concerns is a valid exercise of municipal police powers as long as the ordinance does not conflict with the constitution or general laws").

against certain government actions. "The underlying purpose of substantive due process is to secure the individual from the arbitrary exercise of governmental power." *Id.* at 523.

A party arguing that an ordinance violates his or her substantive due process rights has the burden of showing that the ordinance is arbitrary and unreasonable. *Conlin v Scio Twp,* 262 Mich App 379, 390; 686 NW2d 16 (2004). This is a high burden, as the challenger must negate "every conceivable basis which might support the legislation." *TIG Ins Co v Dep't of Treasury,* 464 Mich 548, 558; 629 NW2d 402 (2001). Under a substantive due process analysis, an ordinance will be upheld if it is "rationally related to a legitimate government interest." *Conlin, supra,* 262 Mich App at 389.[8]

The government interests advanced by the City to justify the proposed ordinances include, among others, the protection of natural resources, preservation of the public way, and protection of property. Presumably, the City would further contend that the economic and environmental well-being, health, safety and general welfare of the City is dependent upon and related to the preservation of the Lake Michigan shoreline within the City's boundaries; that property values will generally be enhanced by the preservation of the natural features of the shoreline; and that it is obligated to prevent or help minimize the impairment or destruction of the shoreline and the adjacent bottomlands.

In our opinion, these interests are legitimate government interests and should be sufficient to justify the constitutionality of the proposed regulations, as long as the regulations are rationally related to one or more of these interests.

By way of example, in the recent case of *Grucz v City of New Baltimore,* Michigan Court of Appeals Docket No. 302860; 2012 WL 2402011 (June 26, 2012), a property owner challenged a city ordinance that prohibited fences within 30 feet of water, after the city stopped her from erecting a fence on the lake side of her waterfront property. The Court found that the ordinance was constitutional, even though it impacted the owner's property rights.

In the *Grucz* case, the Court of Appeals reaffirmed that aesthetics and public safety are legitimate governmental interests that are sufficient to justify the constitutionality of a zoning ordinance. *Id.,* slip op at 3, citing *Adams Outdoor Advertising, supra* at 693. The Court held that "protecting and promoting public health, safety, and general welfare are legitimate governmental interests...and protecting aesthetic value is included in the concept of the general welfare." *Norman Corp v City of East Tawas,* 263 Mich App 194, 200-201; 687 NW2d 861 (2004).

In our opinion, the interests advanced by the City in this matter are significantly stronger than a government's interest in protecting only aesthetic value. Thus, in our opinion, it is unlikely that a court would strike down the proposed regulations on substantive due process grounds unless there was no rational basis between the City's stated interests and the adopted

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[8] Property owners sometimes argue that they have a fundamental right to develop their property. However, the United States Supreme Court has consistently applied the reasonable and legitimate state interest test to land-use decisions and has not treated land-use issues as involving fundamental rights. *Dolan v City of Tigard,* 512 US 374; 114 S Ct 2309 (1994); *Euclid v Ambler Realty Co,* 272 US 365, 395; 47 S Ct 114 (1926) (stating that before a zoning ordinance can be declared unconstitutional, the provision must be clearly arbitrary and unreasonable, having no substantial relation to the public health, safety, morals, or general welfare).

ordinances. See *e.g.*, *Young v American Mini Theatres, Inc,* 427 US 50, 71; 96 S Ct 2440; 49 L Ed 2d 310 (1976) (stating that a municipality's interest in attempting to preserve quality of life is accorded high respect). See also *Bevan v Brandon Twp,* 438 Mich 385, 399-400; 475 NW2d 37 (1991) (upholding an ordinance restricting lakefront property, finding that it was rationally related to the legitimate government purpose of ensuring access for emergency personnel); *Cummins v Robinson Twp*, 283 Mich App 677, 702; 770 NW2d 421 (2009) (the township's enforcement of flood-resistant building code requirements advanced legitimate state interests in protecting the health, safety, and welfare of the public and protected property located in flood-prone areas).

This conclusion is consistent with cases in other jurisdictions as well. For example, in the case of *Samson v City of Bainbridge Island,* 202 P3d 334, 349 (2009), the Court of Appeals for the State of Washington upheld an amendment to city's shoreline master program that prohibited the construction of single-family private docks in a harbor. The court noted that the amendment was adopted "to protect the aesthetic, navigational, and recreational values that would be diminished by multiple docks in the harbor" and that the amendment did not violate due process rights because "[i]t defies logic to suggest an ordinance is unduly oppressive when it regulates only the activity which is directly responsible for the harm."

Nevertheless, it is not the municipality that is obligated to justify an ordinance by affirmatively showing that it has a reasonable governmental interest in the ordinance—which we believe the City would have in this case—rather, "it is plaintiff who is required to affirmatively prove that defendant does not have a reasonable governmental interest." *Grucz, supra* at 4. Moreover, courts are not to sit as a "superzoning commission," *Brae Burn, Inc v Bloomfield Hills,* 350 Mich 425, 430; 86 NW2d 166 (1957), and will not adjudicate the wisdom of zoning ordinances beyond evaluating them for a rational basis. Thus, the Due Process Clause cannot be invoked by a disgruntled property owner simply because he or she disagrees with the regulation. "The Due Process Clause is not a guarantee against incorrect or ill-advised [governmental] decisions." *Cummins v Robinson Twp,* 283 Mich App 677, 702; 770 NW2d 421 (2009) (citations omitted).

Further, the fact that the local ordinance(s) may impose restrictions that exceed federal or state regulations would not necessarily render the ordinance(s) unconstitutional. In *Frericks v Highland Twp*, 228 Mich App 575, 599; 579 NW2d 441 (1998), the Court of Appeals upheld a township zoning ordinance requiring septic tanks and tile fields to be constructed at least 125 feet from the high water mark of any subaqueous area. The plaintiffs argued that the setback regulation was unreasonable and unnecessary because county and state regulations were adequate. The Court noted there was testimony in the case that the township generally had extremely porous soil, which justified adopting a setback requirement greater than county or state standards as an additional "safety" measure to protect water resources. The Court said, "[g]iven this evidence, while there may be a difference of opinion concerning the need for a 'safety' factor, we are not persuaded that the trial court erred in finding that the setback regulation…was reasonable."[9]

[9] To the extent the City seeks to adopt regulations that are more stringent or restrictive than the state (or federal) requirements, it would be beneficial for the City to be able to present (prior to enactment of the regulations)

Based on the information presented to date, it is our opinion that the proposed ordinances would likely withstand a constitutional challenge under a substantive due process argument because they appear to directly advance legitimate government interests—as long as the ordinances that the City adopts are rationally related to those interests.

B. Equal Protection

Property owners sometimes challenge ordinances arguing that the ordinance violates his or her right to equal protection.[10] In determining whether application of an ordinance violates equal protection, courts apply the following principles set forth in *Shepherd Montessori Center Milan v Ann Arbor Charter Twp,* 486 Mich 311, 318-319; 783 NW2d 695 (2010):

> When reviewing the validity of state legislation or other official action that is challenged as denying equal protection, the threshold inquiry is whether plaintiff was treated differently from a similarly situated entity. The general rule is that legislation that treats similarly situated groups disparately is presumed valid and will be sustained if it passes the rational basis standard of review: that is, the classification drawn by the legislation is rationally related to a legitimate state interest. Under this deferential standard, "the burden of showing a statute to be unconstitutional is on the challenging party, *not* on the party defending the statute[.]" [Citations omitted; emphasis in original.][11]

Based upon our understanding of the proposed regulations, it does not appear that there would be any disparate treatment among similarly situated property owners. The ordinances would be generally applicable, would not single out any waterfront property owners for special treatment, and would treat all persons of the same class alike. In other words, no immunities or privileges would be extended to an arbitrary or unreasonable class while denied to others of like kind.

If a challenger is unable to meet his or her burden of proving different treatment, and as long as there is no evidence of discriminatory intent in the enforcement of the ordinance, then a court would not even apply the rational basis test to determine whether the ordinance is rationally related to a legitimate state interest. *Shephard, supra* at 323 ("because plaintiff has

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evidence or testimony, if necessary, that there are factors or characteristics unique to the area that justify the additional "safety measures."

[10] The Equal Protection Clause requires that all persons similarly situated be treated alike under the law.

[11] When legislation treats similarly situated groups differently on the basis of a suspect classification (e.g., race, alienage, or national origin), or infringes on a fundamental right protected by the Constitution (e.g., the free exercise of religion), "the legislation must pass the rigorous strict scrutiny standard of review: that is, the government bears the burden of establishing that the classification drawn is narrowly tailored to serve a compelling governmental interest." *Shephard, supra* at 319. If legislation treats similarly situated groups differently on the basis of a quasi-suspect classification (e.g., gender), then the intermediate scrutiny test is applied and "the burden is on the government to show that "the classification serves important governmental objectives and that the means employed are substantially related to the achievement of those objectives." *Id.* Where, as here, an ordinance is facially neutral, the burden is on the challenging party—not the government—to show that the challenging party "was actually treated differently from others similarly situated and that no rational basis exists for the dissimilar treatment." *Id.* at 319-320.

failed to demonstrate that it was treated differently from similarly situated entities, we need not apply the rational basis test").

Even assuming for argument's sake that there was evidence of dissimilar treatment, courts will uphold legislation as long as it is "rationally related to a legitimate government purpose." A reviewing court need only determine if there is "any reasonably conceivable state of facts that could provide a rational basis for the classification." *Kenefick v City of Battle Creek,* 284 Mich App 653, 658; 774 NW2d 925 (2009). The finding may be based on "rational speculation unsupported by evidence or empirical data." *Id.*

The person challenging the ordinance has an extremely high burden—"the challenger must 'negative [sic] *every conceivable basis* which might support' the legislation." *Id.* (citation omitted). See also *Risko v Grand Haven Charter Twp Zoning Bd of Appeals,* 284 Mich App 453, 465; 773 NW2d 730 (2009) ("[T]he party raising the equal protection challenge has the burden of proving that the challenged law is arbitrary and thus irrational"); *Houdek v Centerville Twp,* 276 Mich App 568, 585; 741 NW2d 587 (2007) ("When an ordinance is challenged on the basis of equal protection guarantees, the ordinance is presumed constitutional, and the challenging party has the burden to show that the established classification is not rationally related to a legitimate state interest").

Lakefront property owners are not a protected class. Thus, based on the information presented to date, it is our opinion that the proposed ordinances would likely withstand a constitutional challenge under an equal protection argument, so long as the ordinances are rationally related (or bear a reasonable relationship) to a legitimate governmental interest, they treat similarly situated individuals alike, and they do not single out any property owner for special treatment. We believe that if the ordinances meet these requirements, it is unlikely that a court would conclude that the ordinances are arbitrary and irrational, or that a challenger could overcome the substantial burden to negate *every conceivable basis* which might support the ordinances.

C. Regulatory Taking

Finally, it is not unusual for property owners to challenge an ordinance claiming that the ordinance restricts the use of their property in an unreasonable manner, and, as a result, constitutes an impermissible "taking" of private property for public purposes without compensation.

The United States and Michigan Constitutions provide that private property shall not be taken for public use without just compensation. The government may effectively "take" a person's property by overburdening that property with regulations. However, a "land-use regulation does not effect a taking if it substantially advances legitimate state interests and does not deny an owner economically viable use of his land." *Nollan v California Coastal Comm,* 483 US 825, 834 (1987).

Courts have found that land use regulations effectuate a taking where the regulation denies an owner economically viable use of his land. *K & K Const, Inc v Dep't of Nat Res*, 456 Mich 570, 576-77; 575 NW2d 531(1998). This type of taking encompasses two types of

situations: (1) a "categorical" taking, where the owner is deprived of "all economically beneficial or productive use of land," *Lucas v South Carolina Coastal Council,* 505 US 1003, 1015 (1992); and (2) a taking recognized on the basis of the application of the traditional "balancing test" established in *Penn Central Transp Co v New York City,* 438 US 104 (1978).

Based upon our understanding of the proposed ordinances, it is highly unlikely that the ordinances would force a property owner to sacrifice *all economically beneficial uses* of his or her land, except perhaps if the proposed setback requirement rendered a currently buildable vacant lot *unbuildable* or would cause an existing building to be destroyed by coastal conditions without the ability to rebuild. Thus, before adopting any setback requirements, the City should investigate what effect the proposed setbacks would have on existing vacant lots (if any), as well as on any lots on which existing structures may be destroyed in the future by fire or natural disaster. Depending upon the results of the investigation, the City may determine that it is highly unlikely that a "categorical" taking would result.

With regard to the second type of "taking," courts analyze such a claim using three factors: (1) the character of the government's action, (2) the economic effect of the regulation on the property, and (3) the extent by which the regulation has interfered with distinct, investment-backed expectations. *Penn Central, supra* at 124.

The first factor evaluates whether a property owner is being singled out or whether an ordinance applies broadly and equally. *Chelsea Inv Group LLC v Chelsea,* 288 Mich App 239, 261; 792 NW2d 781 (2010). As discussed above, it appears based upon the information presented to date that the City has the authority to adopt the proposed ordinances, that the ordinances could be rationally related to legitimate governmental interests, and that the ordinances would apply broadly and equally. Assuming that to be true, this factor would weigh in favor of the City.

To the extent a challenger claims that the economic effect of the ordinances amounts to a taking under the second factor, it is well established that mere diminution in value is not enough to establish a taking. "The Taking Clause does not guarantee property owners an economic profit from the use of their land." *Frericks v Highland Twp*, 228 Mich App 575, 616; 579 NW2d 441, 460 (1998). Further, in applying a "taking" analysis, the full bundle of property rights associated with land is generally viewed in its entirety. *Bevan v. Brandon Twp.,* 438 Mich. 385, 395-397, 475 N.W.2d 37 (1991). As a result, restrictions on the use of only limited portions of a parcel, such as setback ordinances, are not generally considered regulatory takings. *Tahoe-Sierra Pres Council, Inc v Tahoe Regl Planning Agency*, 535 US 302, 327 (2002) ("where an owner possesses a full 'bundle' of property rights, the destruction of one 'strand' of the bundle is not a taking"); *Gorieb v Fox,* 274 US 603 (1927).[12]

Finally, under the third factor, courts consider whether the challenger has made any investments in the property that were subsequently lost because of the ordinance. To the extent a challenger contends that the ordinances interfere with distinct, investment-backed expectations

[12] Indeed, it is our understanding that one of the purposes for the proposed ordinances is to protect private property and to, in fact, enhance the value of that property. Enhancing property values serves legitimate governmental interests including but not limited to increasing the tax base and, therefore, property tax revenues.

concerning riparian rights, the expectations must be viewed in light of the public trust doctrine discussed above. Our Supreme Court has articulated the following standard with regard to the taking of riparian rights: "Riparian rights are property, for the taking or destruction of which by the State compensation must be made, *unless the use has a real and substantial relation to a paramount trust purpose.*" *Peterman v Dep't of Nat Resources,* 446 Mich 177, 213-214; 521 NW2d 499 (1994), citing *Hilt v Weber,* 252 Mich 198, 225; 233 NW 159 (1930).

In the Peterman case, landowners brought an action against the Department of Natural Resources ("DNR"), alleging that the DNR's construction of a boat launch and jetties—which resulted in the destruction of the plaintiffs' beachfront property as a result of erosion and filtration of sand—was an unconstitutional taking. The court found that

> defendant's [the DNR's] actions were the proximate cause of the destruction of plaintiffs' beachfront property. Assuming that defendant did not directly invade plaintiffs' land, it undoubtedly set into motion the destructive forces that caused the erosion and eventual destruction of the property. Defendant was forewarned that the construction of the jetties could very well result in the washing away of plaintiffs' property, and the evidence reveals that the destruction of plaintiffs' property was the natural and direct result of the defendant's construction of the boat launch. The effect of defendant's actions were no less destructive than bulldozing the property into the bay. [*Peterson, supra,* at 191.]

The court noted that as a result of erosion from the DNR's construction of the boat launch and jetties, the plaintiffs had lost a significant amount of "fast land." Fast land is property that is "above the high water mark." *Id.* at 181. The court then concluded—citing to several earlier court decisions—that fast land cannot be taken without just compensation. See also *United States v Rands*, 389 US 121, 123 (1967), in which the United States Supreme Court stated that "when fast lands are taken by the Government, just compensation must be paid."

In our opinion, regulations of the type proposed are distinguishable from government-caused erosion or flooding due to government improvements or construction. In the *Peterson* case, the government (there, the DNR) actually undertook activity that caused the property damage. In contrast, the City in this case is simply seeking to regulate and/or prevent the development of shoreline property by the property owner. And, in our opinion, prohibiting a property owner from constructing a seawall, in and of itself, does not amount to an unconstitutional taking.

However, we cannot conclude that the City would be insulated from an action by one or more property owners alleging that the City ordinances prohibiting the construction of certain shoreline protection structures caused increased erosion or the loss of fast land for which compensation must be paid. If such an action were to be filed against the City, expert testimony would, quite obviously, be critical with respect to the effects of building/prohibiting shoreline protection structures.

The case of *Shell Island Homeowners Association, Inc v Tomlinson*, 517 SE2d 406 (1999) is instructive on this issue. In that case, the Court of Appeals of North Carolina upheld a state regulation that prohibited permanent erosion control structures, including seawalls. The

court rejected the property owners' argument that the regulation amounted to a "taking," finding that the property owners failed to show that they had any legally cognizable property interest that had been taken by the state. The court explained:

> The invasion of property and reduction in value which plaintiffs allege clearly stems from the natural migration of Mason's Inlet, and plaintiffs have based their takings claim on their need for "a permanent solution to the erosion that threatens its property," and the premise that "[t]he protection of property from erosion is an essential right of property owners...." The allegations in plaintiffs' complaint have no support in the law, and plaintiffs have failed to cite to this Court any persuasive authority for the proposition that a littoral or riparian landowner has a right to erect hardened structures in statutorily designated areas of environmental concern to protect their property from erosion and migration. [*Id.* at 228.]

The court in the *Shell Island* case stressed that there was no actual interference with the plaintiffs' property rights. Rather, the alleged injuries were merely consequential or incidental and "allegations of mere incidental or consequential interferences with property rights are insufficient to maintain and action for inverse condemnation." *Id.* at 229. The court found that the alleged damages to the plaintiffs' property were not caused by the government's regulatory action, but by "naturally occurring phenomena" of the migration of the inlet and the resulting erosion of the property. *Id.* at 229-230.

Similarly here, the City's enforcement of the proposed regulations (i.e., a ban on shoreline protection structures in Area 1) would be incidental to naturally occurring events. Thus, as long as the regulations would not cause a property owner to lose all economically beneficial or productive use of their property (as opposed to suffering a mere reduction in value), we believe that the regulations could withstand constitutional scrutiny under a takings analysis, even if as a result of the regulations a property owner suffered incidental damage from naturally occurring phenomena.

In sum, it is our opinion that City has the legal authority under state law and federal law to enact and enforce the types of ordinances it is considering. Further, it is our opinion that such ordinances can withstand constitutional scrutiny if they apply broadly and equally, do not single out any property owners, and do not deprive a property owner of all economically viable uses of his or her property.[13]

[13] We note that depending on how the City decides to proceed with regard to the Area 2 recommendations, there may be additional areas requiring additional research. For example, what are the ramifications, if any, of requiring property owners to construct shoreline protection structures on public property (realizing that with regard to most parcels in Area 2, there may be no alternative)? This raises questions regarding ownership and maintenance of the structures, as well as governmental liability and the appropriate mechanism/procedure for granting property owners permission to construct the structures, while at the same time minimizing the City's exposure to liability.

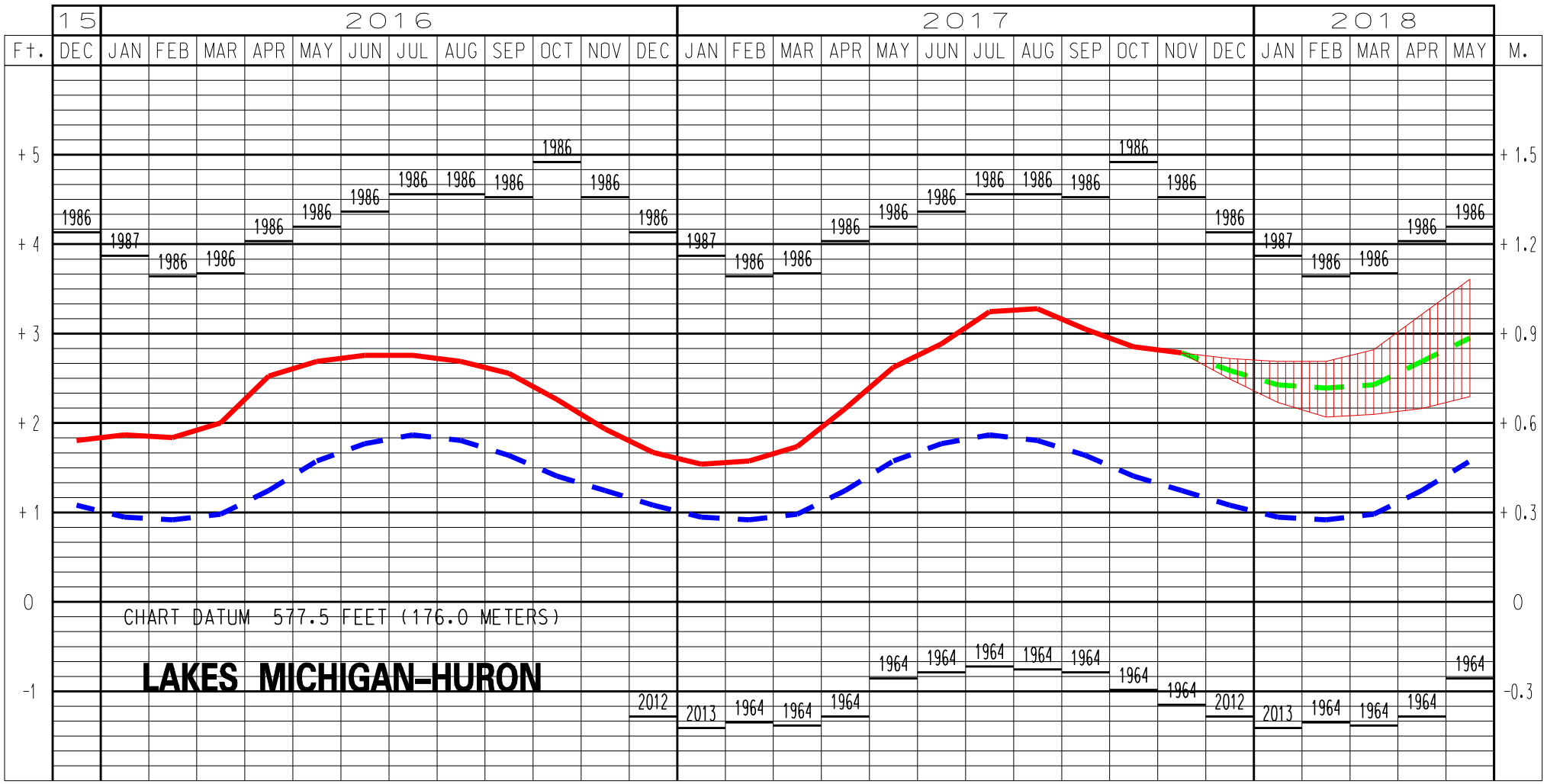
Thank you for allowing us the opportunity to work with the City. If there are additional questions regarding these matters, or if we can be of further assistance, please do not hesitate to contact us.

Very truly yours,

Jeffrey V.H. Sluggett

APPENDIX B

LAKES MICHIGAN–HURON WATER LEVELS – DECEMBER 2017



LEGEND

LAKE LEVELS

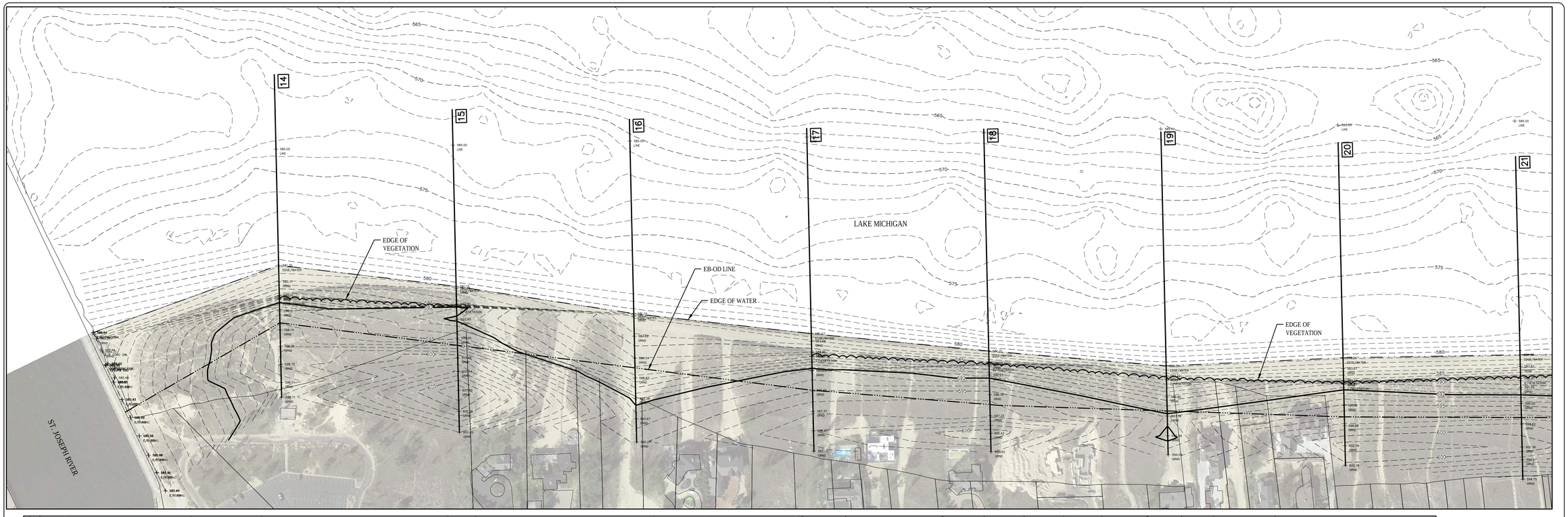
RECORDED

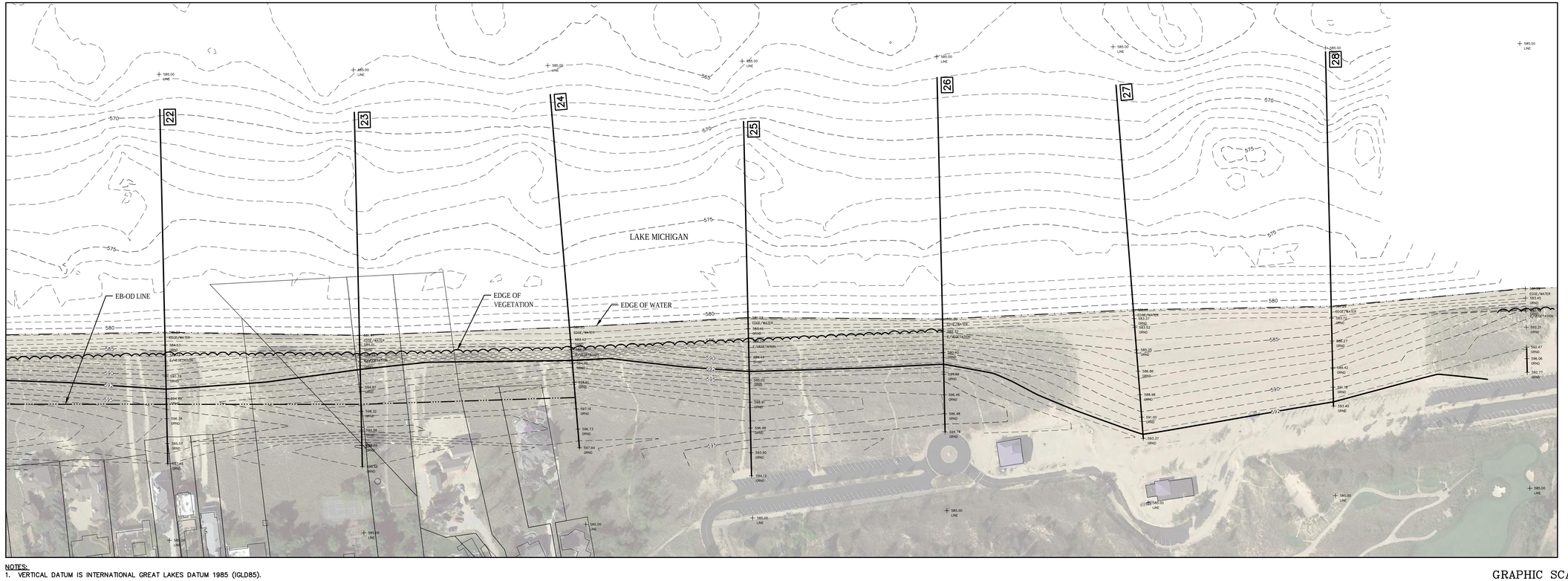
PROJECTED

AVERAGE **				
MAXIMUM **	1985	1985	1973	1973
MINIMUM **	1936	1934	1926	1934

** Average, Maximum and Minimum for period 1918-2016

APPENDIX C





NOTES:

1. VERTICAL DATUM IS INTERNATIONAL GREAT LAKES DATUM 1985 (IGLD85).
2. 2017 DATA COLLECTED MAY, 2017.
3. CONTOURS ARE APPROXIMATE AND BASED UPON DATA SPACED AT WIDE INTERVALS.
4. PARCEL LINES ARE APPROXIMATE AND BASED UPON BERRIEN COUNTY G.I.S. RECORDS. THIS DRAWING IS NOT A BOUNDARY SURVEY.
5. HORIZONTAL REFERENCE IS MICHIGAN STATE PLANE COORDINATE SYSTEM (GRID, NAD83, US SURVEY FEET).

GRAPHIC SCALE

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(IN FEET)

1 inch = 120 ft.

NO.	REVISION DESCRIPTION:	BY:	DATE:

ABONMARCHE
95 West Main Street Benton Harbor, MI. 49023
Edgewater resources

PROJECT:

CITY OF ST. JOSEPH
COASTAL STUDY

SHEET TITLE:

AREA 1

DRAWN BY: DJL

DESIGNED BY: MJR

PM REVIEW: MCM

QA/QC REVIEW:

DATE: 12-21-2017

SEAL:

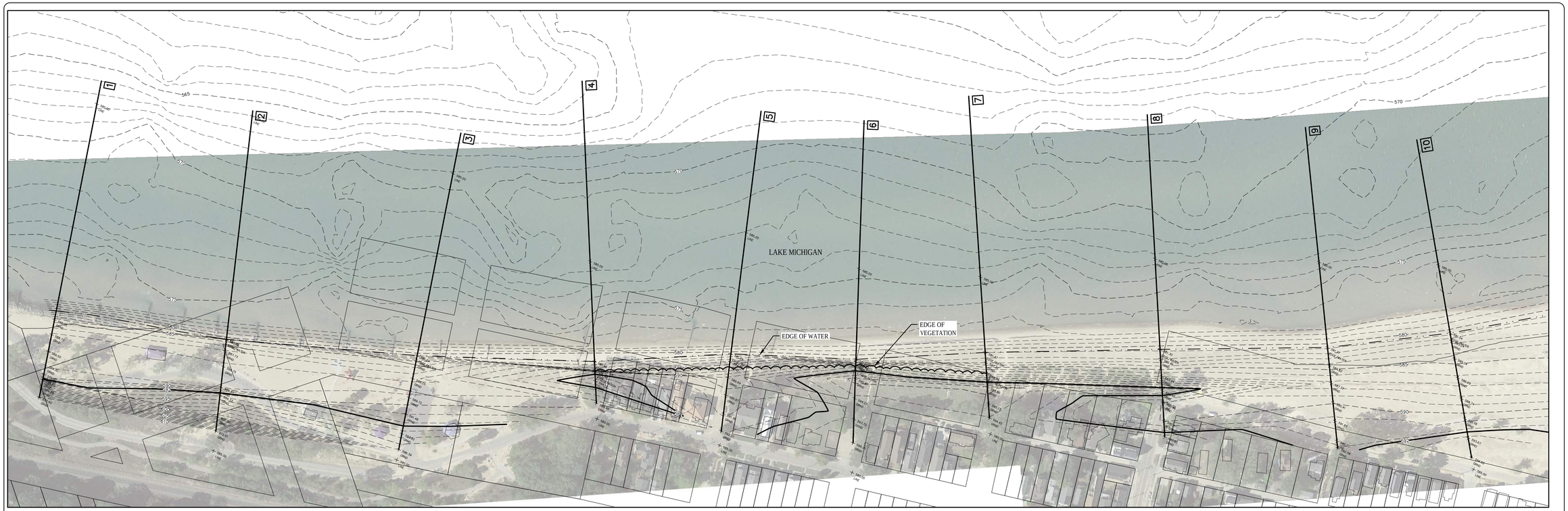
DATE: MAY 2017

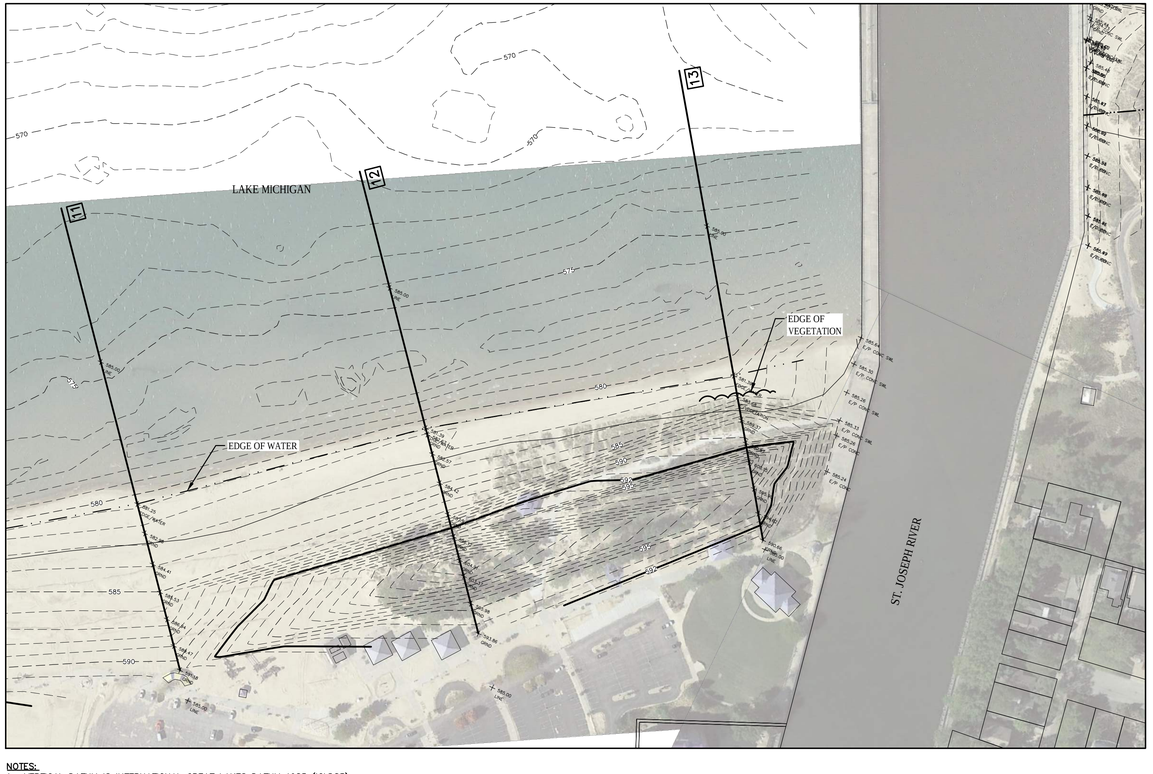
HARD COPY IS INTENDED TO BE 24" X 36" WHEN PLOTTED. SCALE(S) INDICATED AND GRAPHIC QUALITY MAY NOT BE ACCURATE FOR ANY OTHER SIZES

SCALE:
HORZ: 1"=120'
VERT: N/A

ACI JOB #
17-0277

SHEET NO.
1 of 1





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NORTH

GRAPHIC SCALE

120 0 60 120 240 480

(IN FEET)
1 inch = 120 ft.

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ABONMARCHE
95 West Main Street Benton Harbor, MI. 49023
Edgewater resources

PROJECT:
CITY OF ST. JOSEPH
COASTAL STUDY

AREA 2

SHEET TITLE:

DRAWN BY: DJL
DESIGNED BY: MJR
PM REVIEW: MCM
QA/QC REVIEW:
DATE: 12-21-2017
SEAL:

DATE: MAY 2017

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17-0277

SHEET NO.
1 of 1

APPENDIX D

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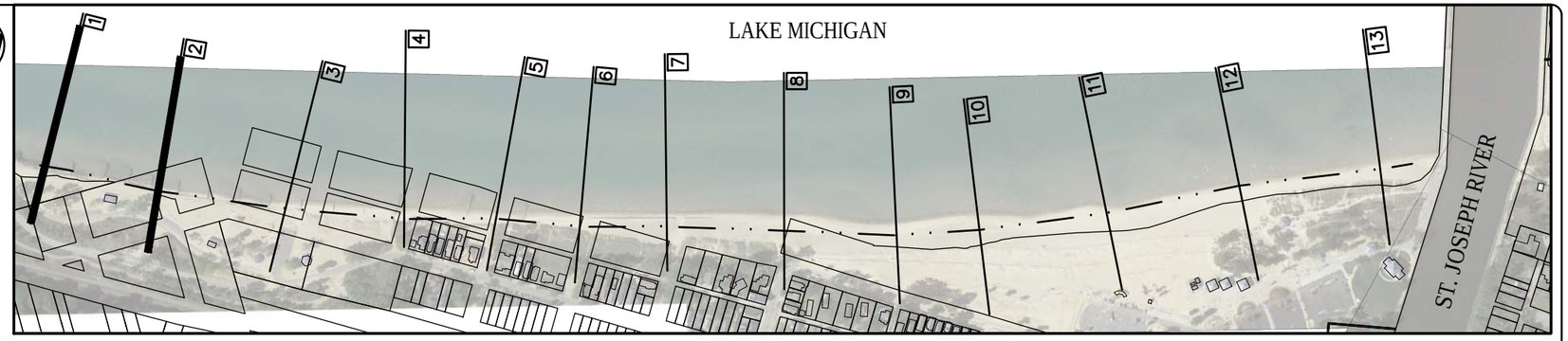

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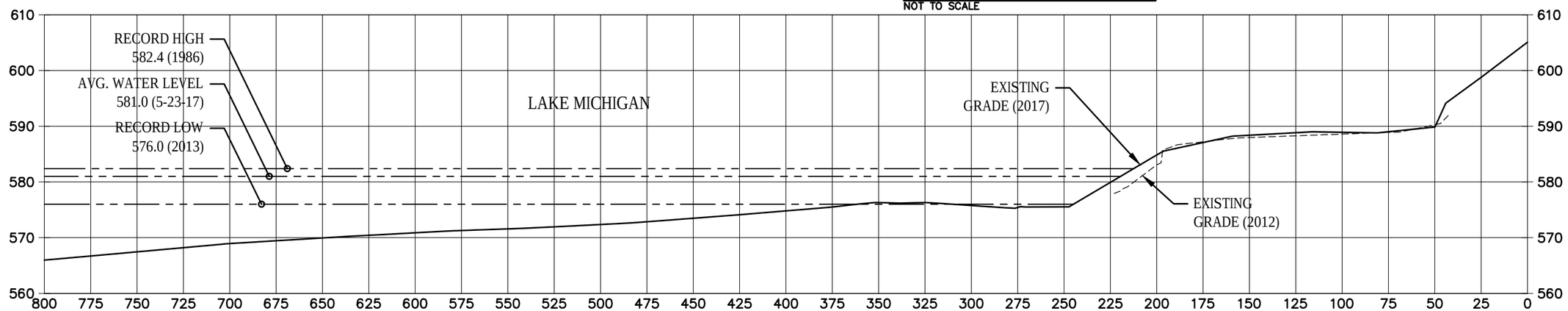

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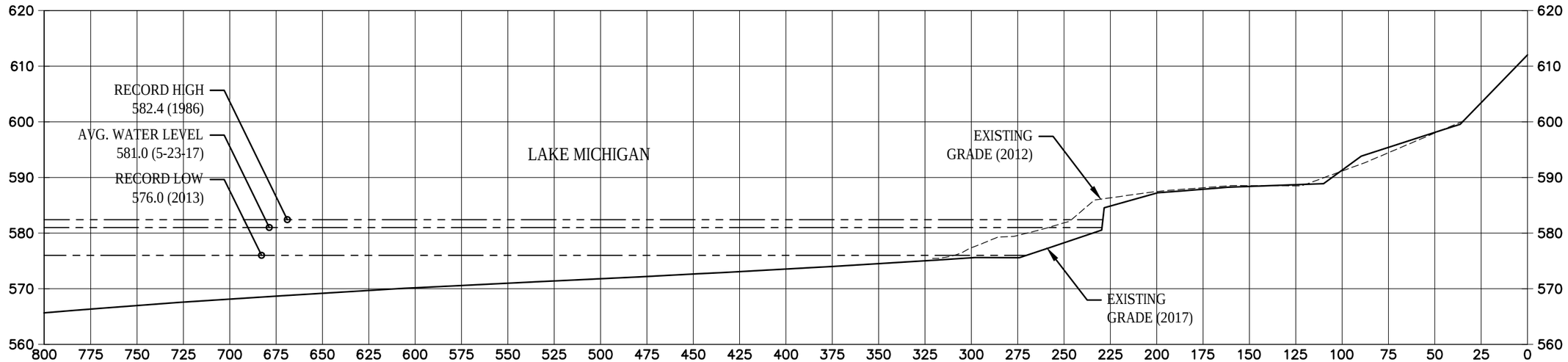

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95 West Main Street Benton Harbor, MI. 49023
Edgewater resources

PROJECT:
CITY OF ST. JOSEPH
COASTAL STUDY
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SECTION VIEW 1-2
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DRAWN BY: DJL
DESIGNED BY: MJR
PM REVIEW: MCM
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ACI JOB #: 17-0277
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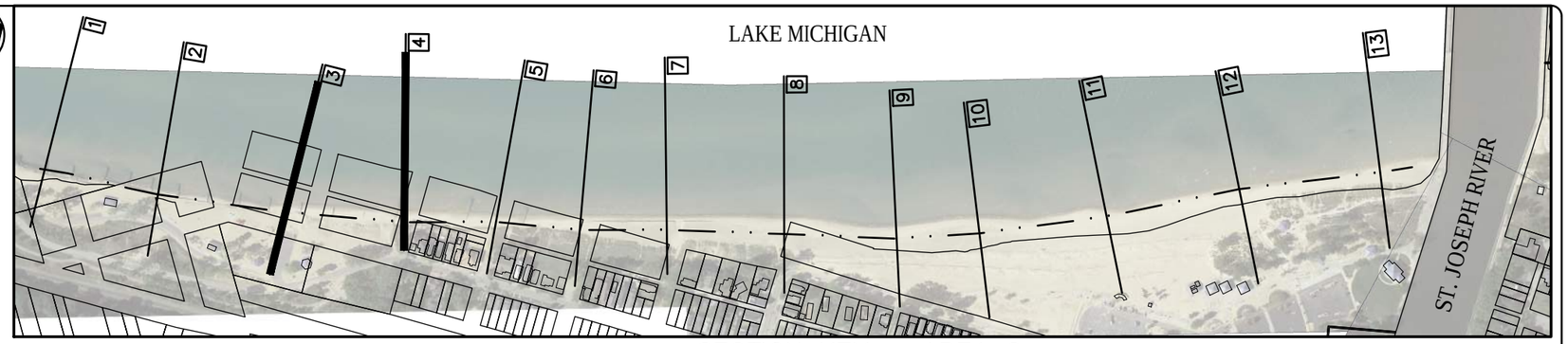

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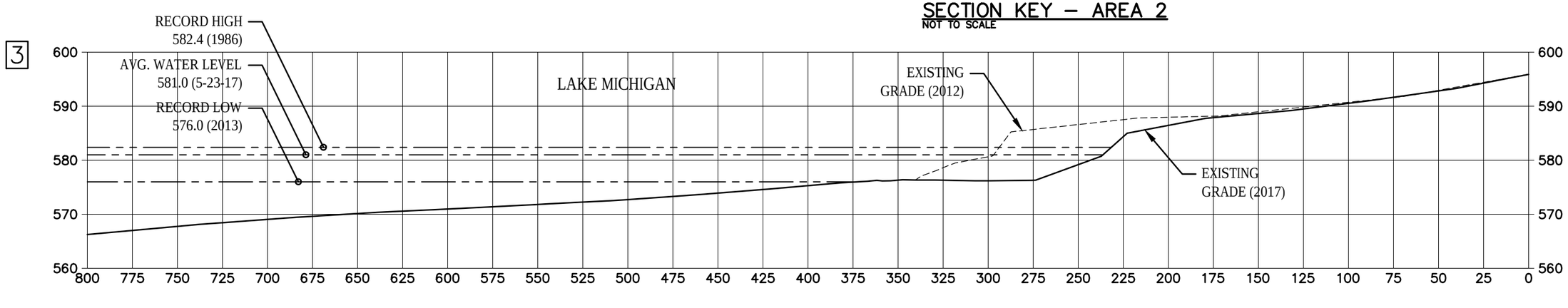

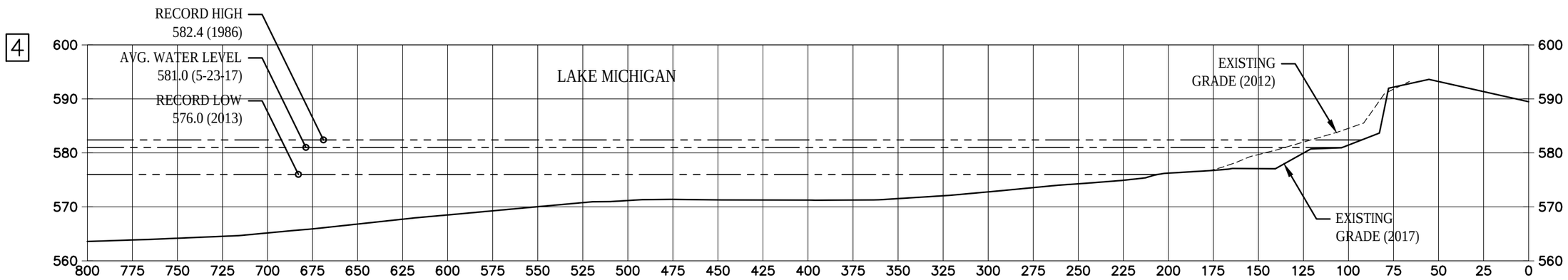

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Edgewater resources

PROJECT:
CITY OF ST. JOSEPH
COASTAL STUDY
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SHEET TITLE:
SECTION VIEW 3-4
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DRAWN BY: DJL
DESIGNED BY: MJR
PM REVIEW: MCM
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ACI JOB # 17-0277
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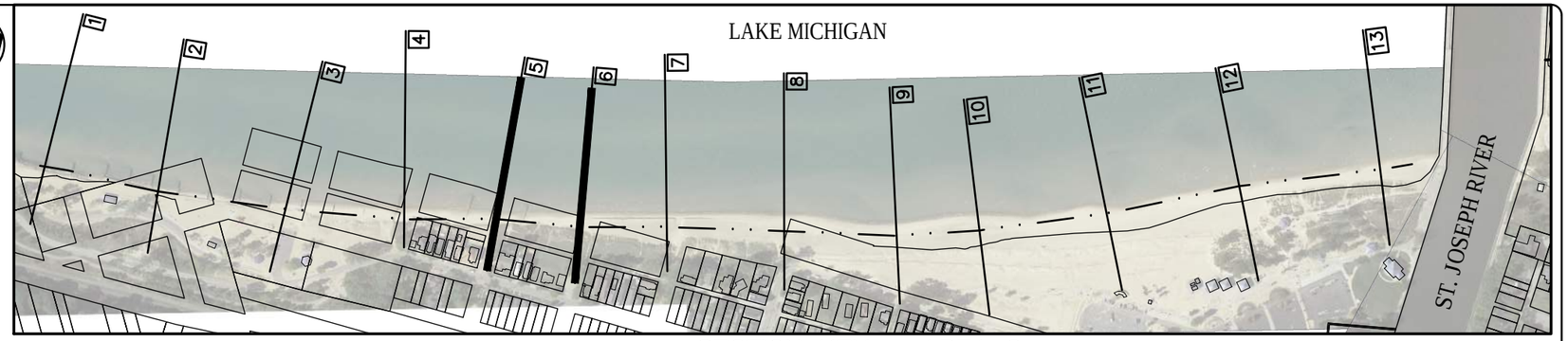

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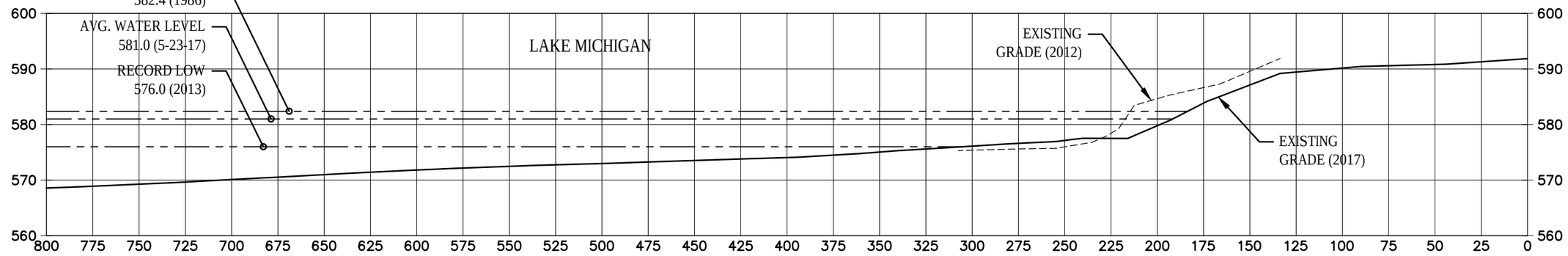

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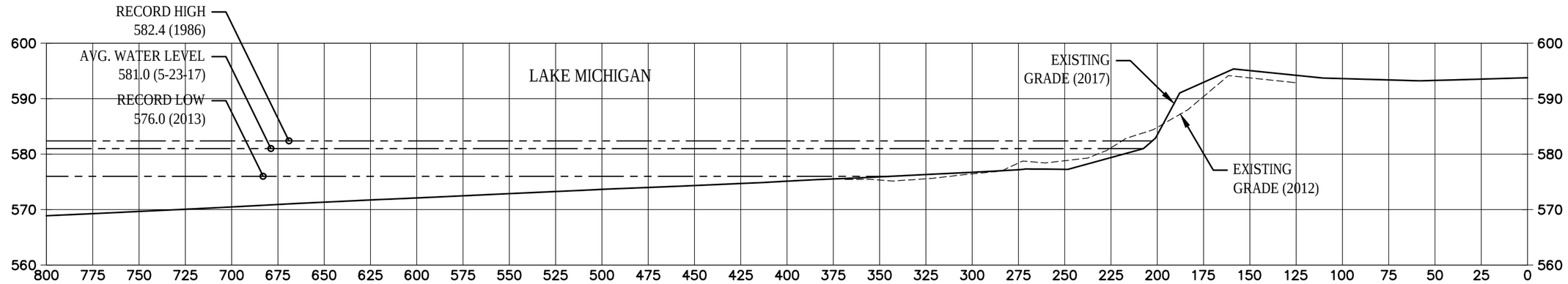

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PROJECT:
CITY OF ST. JOSEPH
COASTAL STUDY
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SHEET TITLE:
SECTION VIEW 5-6
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DRAWN BY: DJL
DESIGNED BY: MJR
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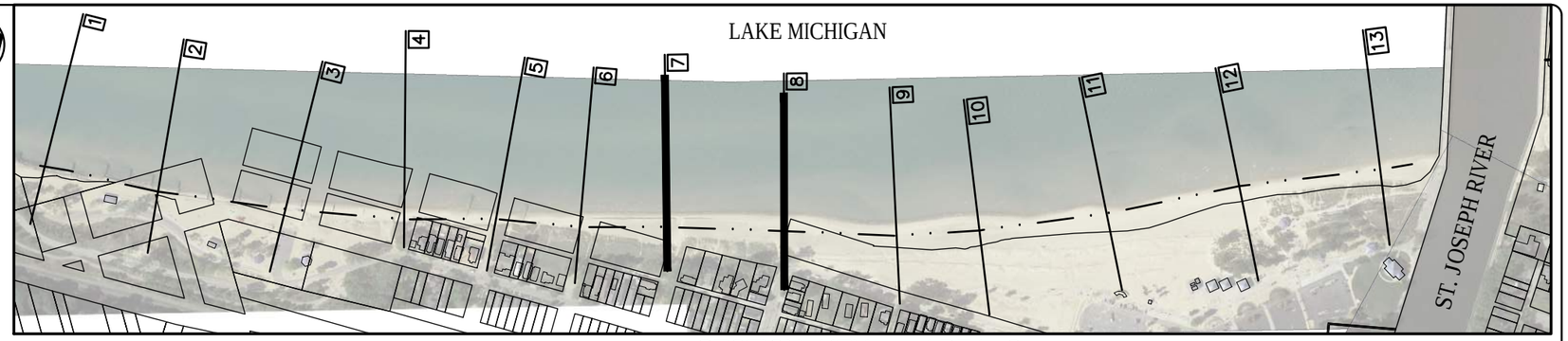

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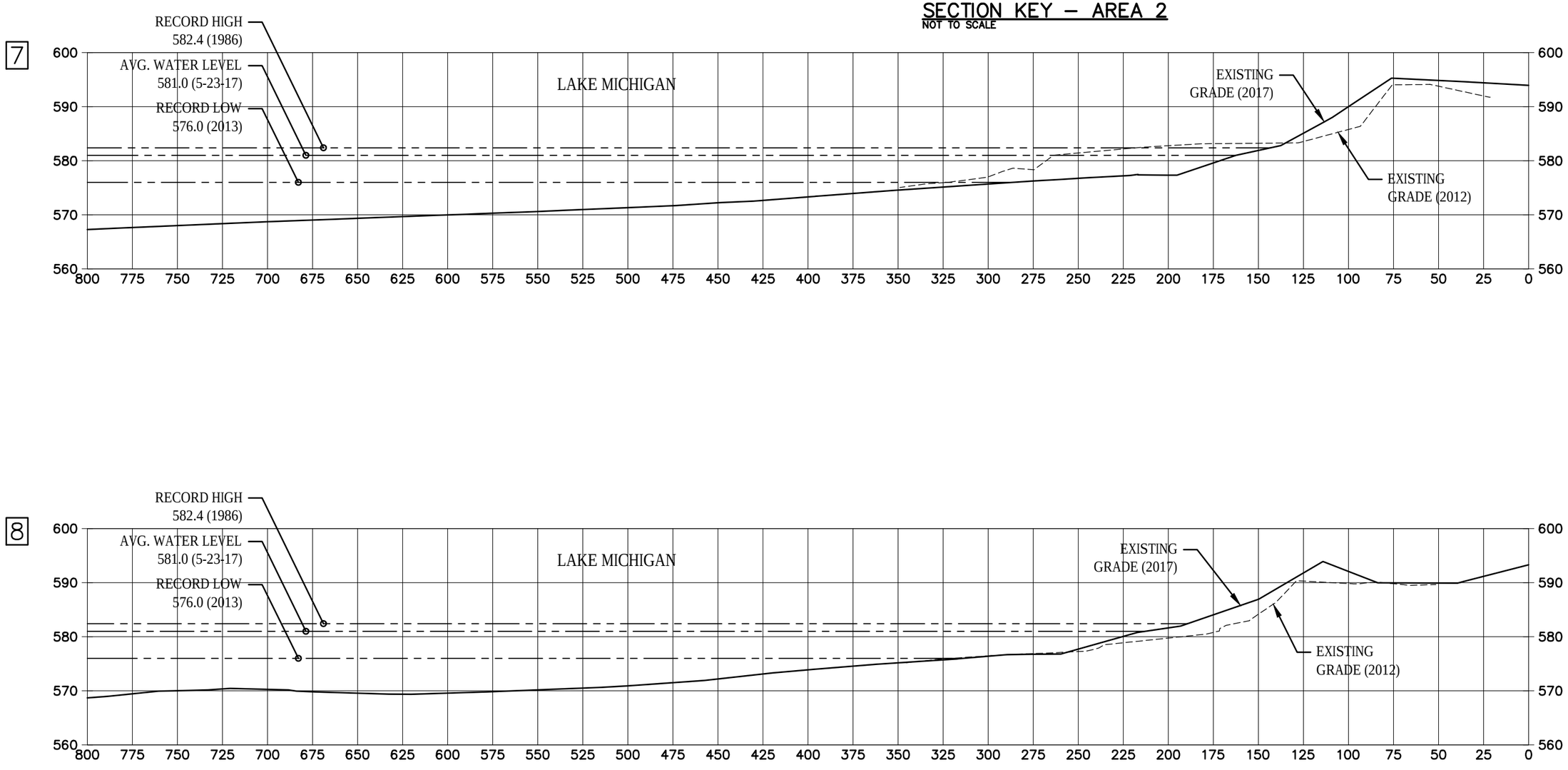

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95 West Main Street Benton Harbor, MI. 49023
Edgewater resources

PROJECT:
CITY OF ST. JOSEPH
COASTAL STUDY
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SHEET TITLE:
SECTION VIEW 7-8
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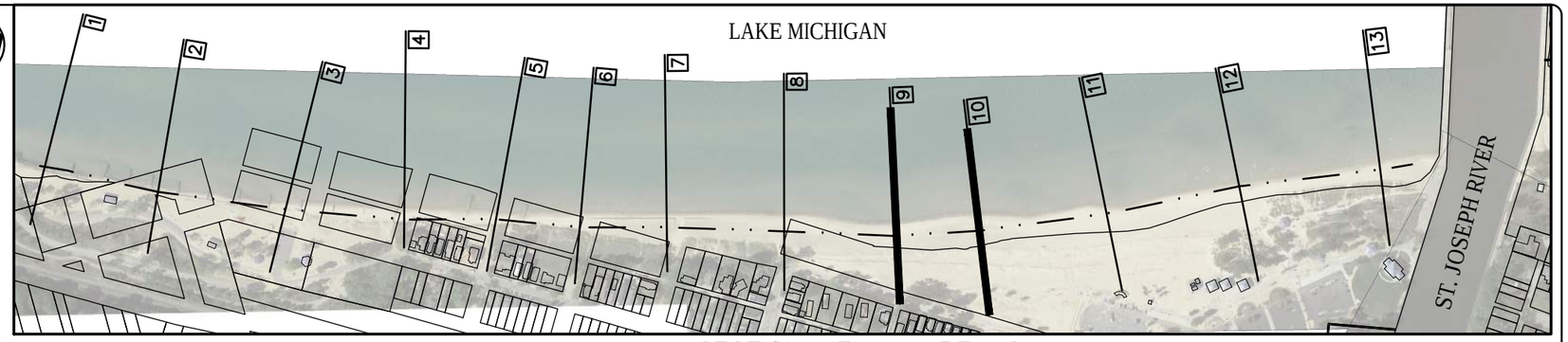

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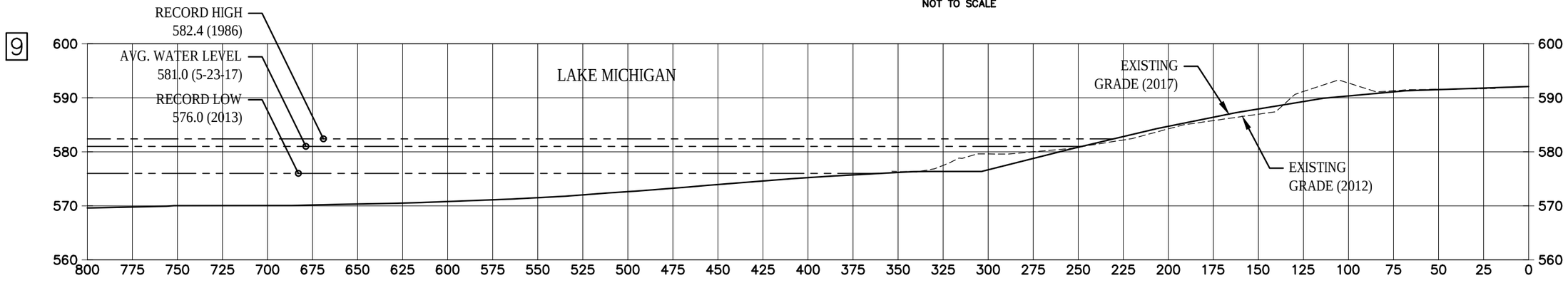

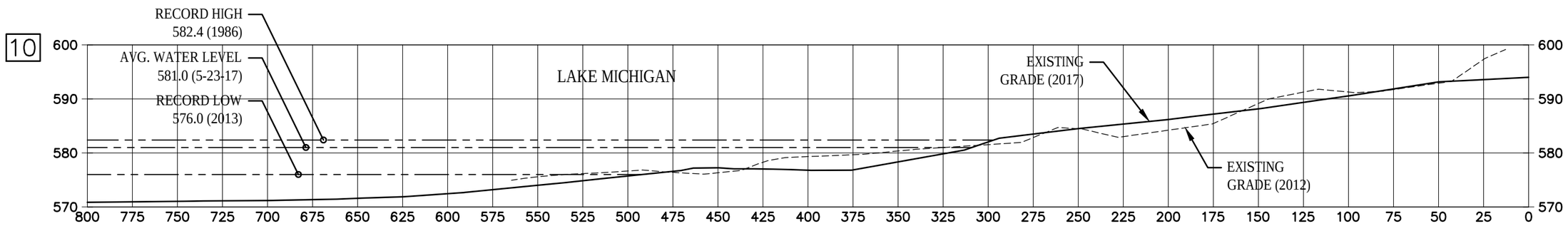

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Edgewater resources

PROJECT:
CITY OF ST. JOSEPH
COASTAL STUDY
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SHEET TITLE:
SECTION VIEW 9-10
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DRAWN BY: DJL
DESIGNED BY: MJR
PM REVIEW: MCM
QA/QC REVIEW: ê
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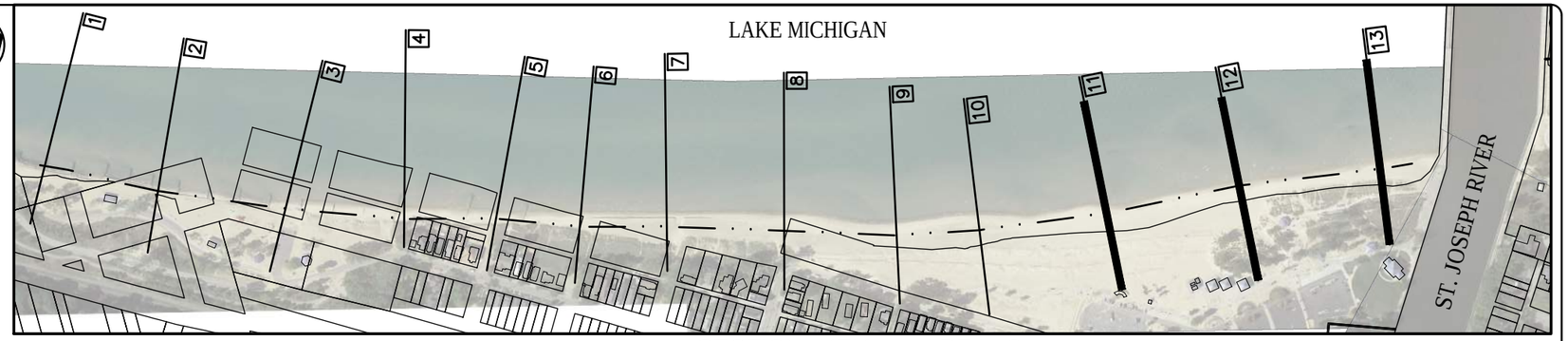
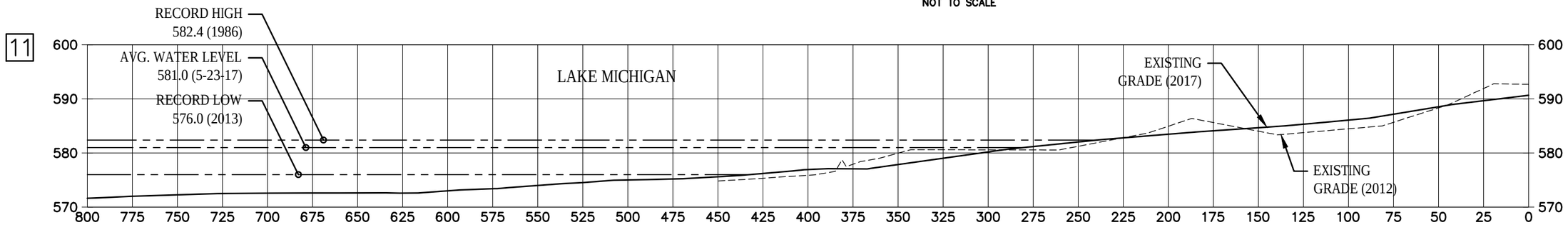
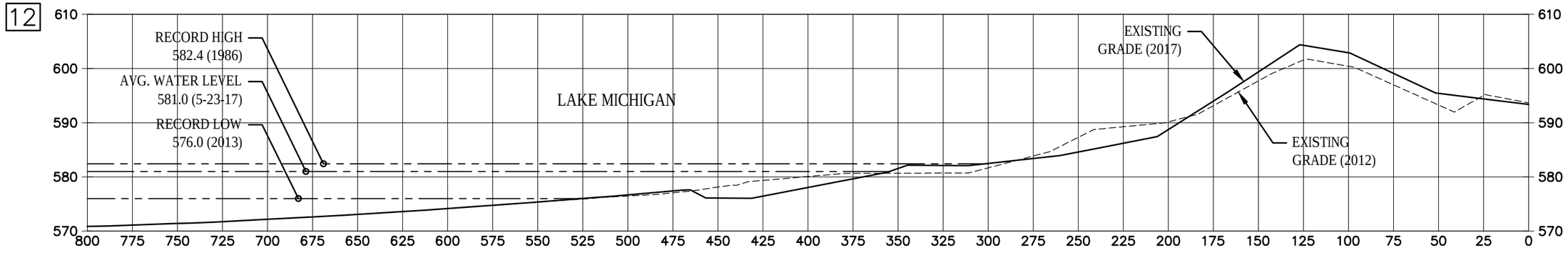
ACI JOB # 17-0277
SHEET NO. 5 of 14

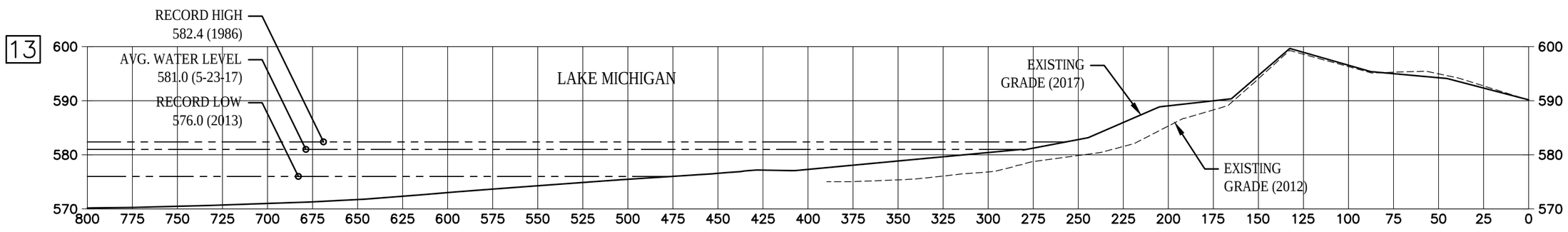
NOTES:
1. VERTICAL DATUM IS INTERNATIONAL GREAT LAKES DATUM 1985 (IGLD85).
2. 2017 DATA COLLECTED MAY, 2017.



SECTION KEY – AREA 2
NOT TO SCALE







NO.	REVISION DESCRIPTION:	BY:	DATE:

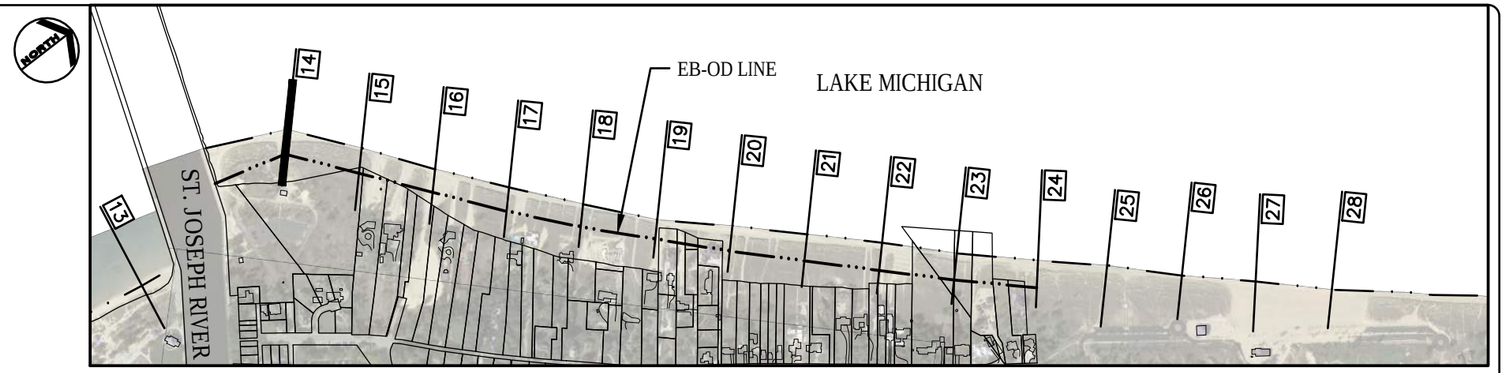
ABONMARCHE
95 West Main Street Benton Harbor, MI. 49023
Edgewater resources

PROJECT:
CITY OF ST. JOSEPH
COASTAL STUDY

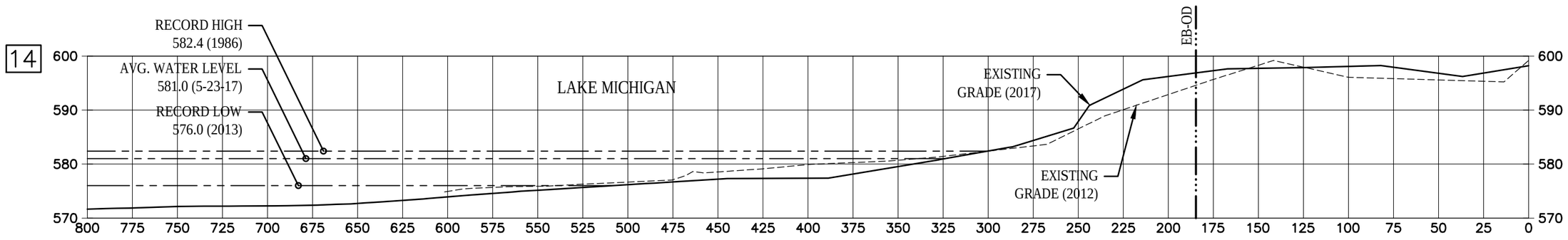
SHEET TITLE:
SECTION VIEW 11-12-13

DRAWN BY: DJL
DESIGNED BY: MJR
PM REVIEW: MCM
QA/QC REVIEW:
DATE: 12-21-2017
SCALE: HORZ: 1"=60'
VERT: 1"=10'
ACI JOB # 17-0277
SHEET NO. 6 of 14

NOTES:
1. VERTICAL DATUM IS INTERNATIONAL GREAT LAKES DATUM 1985 (IGLD85).
2. 2017 DATA COLLECTED MAY, 2017.



SECTION KEY – AREA 1
NOT TO SCALE



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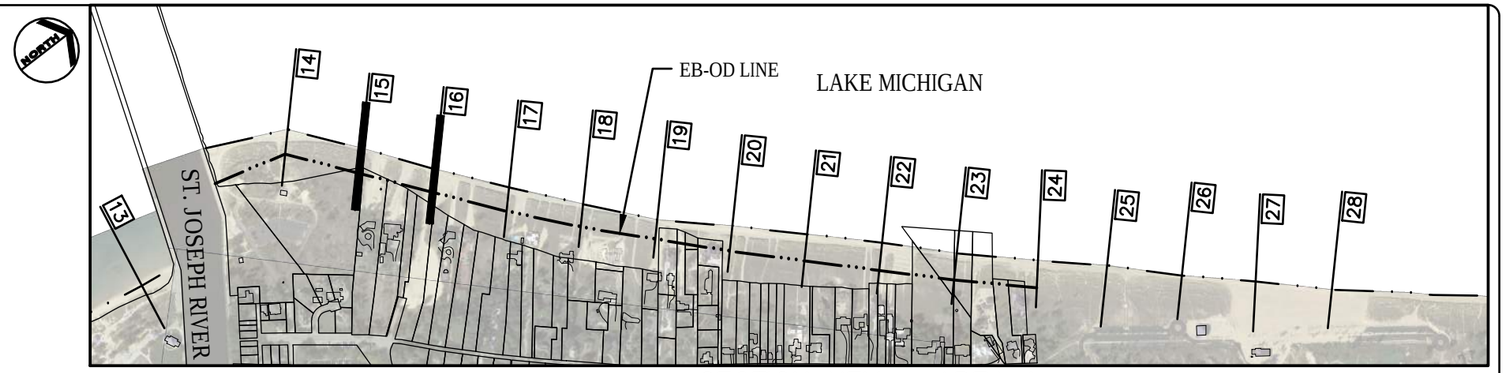
95 West Main Street Benton Harbor, MI. 49023
Edgewater resources

PROJECT:
CITY OF ST. JOSEPH
COASTAL STUDY

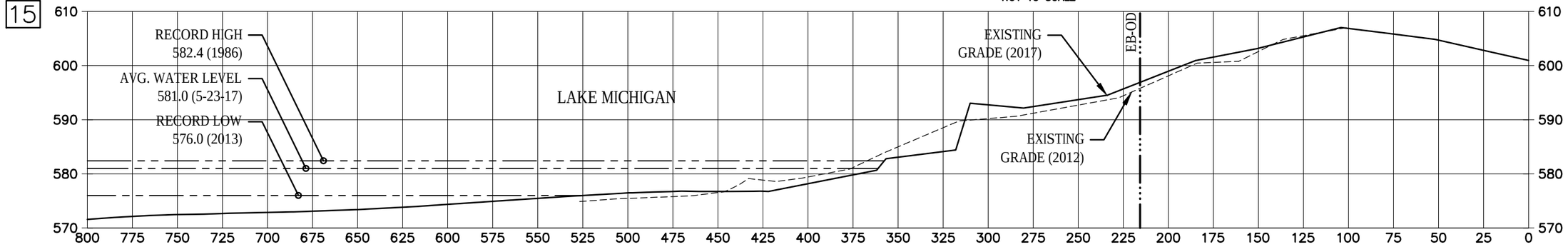
SHEET TITLE:
SECTION VIEW 14

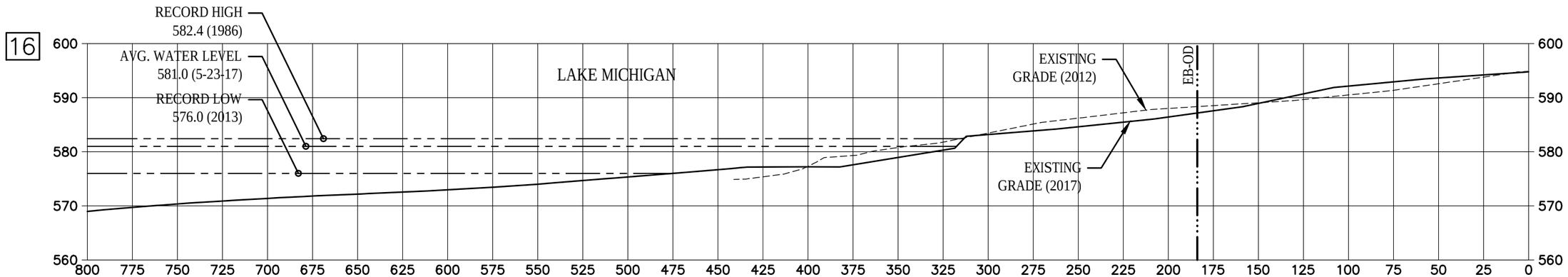
DRAWN BY: DJL
DESIGNED BY: MJR
PM REVIEW: MCM
QA/QC REVIEW:
DATE: 12-21-2017
SCALE: HORZ: 1"=60'
VERT: 1"=10'
ACI JOB # 17-0277
SHEET NO. 7 of 14

NOTES:
1. VERTICAL DATUM IS INTERNATIONAL GREAT LAKES DATUM 1985 (IGLD85).
2. 2017 DATA COLLECTED MAY, 2017.



SECTION KEY – AREA 1
NOT TO SCALE





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Edgewater resources

PROJECT:
CITY OF ST. JOSEPH
COASTAL STUDY
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SHEET TITLE:
SECTION VIEW 15-16
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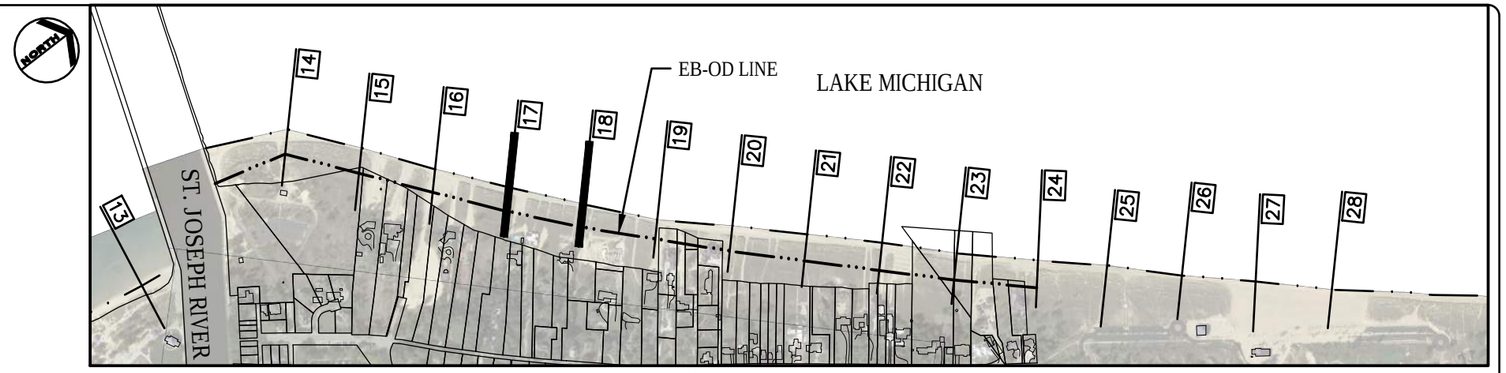
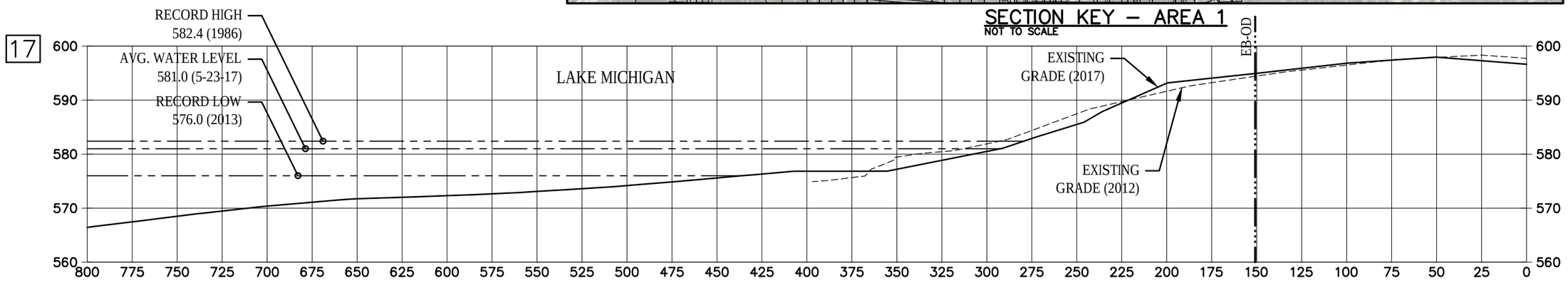
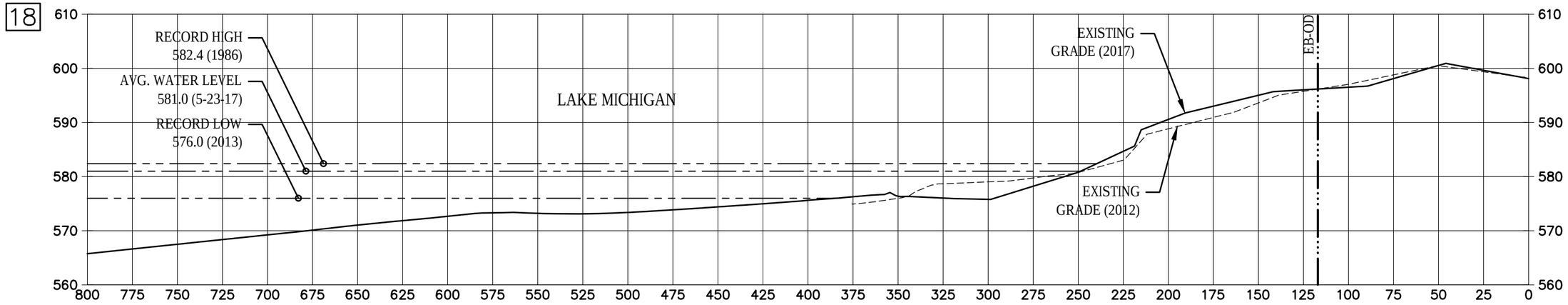
DRAWN BY: DJL
DESIGNED BY: MJR
PM REVIEW: MCM
QA/QC REVIEW: ê
DATE: 12-21-2017
SCALE: HORZ: 1"=60' VERT: 1"=10'
ACI JOB #: 17-0277
SHEET NO.: 8 of 14

NOTES:
1. VERTICAL DATUM IS INTERNATIONAL GREAT LAKES DATUM 1985 (IGLD85).
2. 2017 DATA COLLECTED MAY, 2017.



SECTION KEY – AREA 1
NOT TO SCALE





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95 West Main Street Benton Harbor, MI. 49023
Edgewater resources

PROJECT:
CITY OF ST. JOSEPH
COASTAL STUDY
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SHEET TITLE:
SECTION VIEW 17-18
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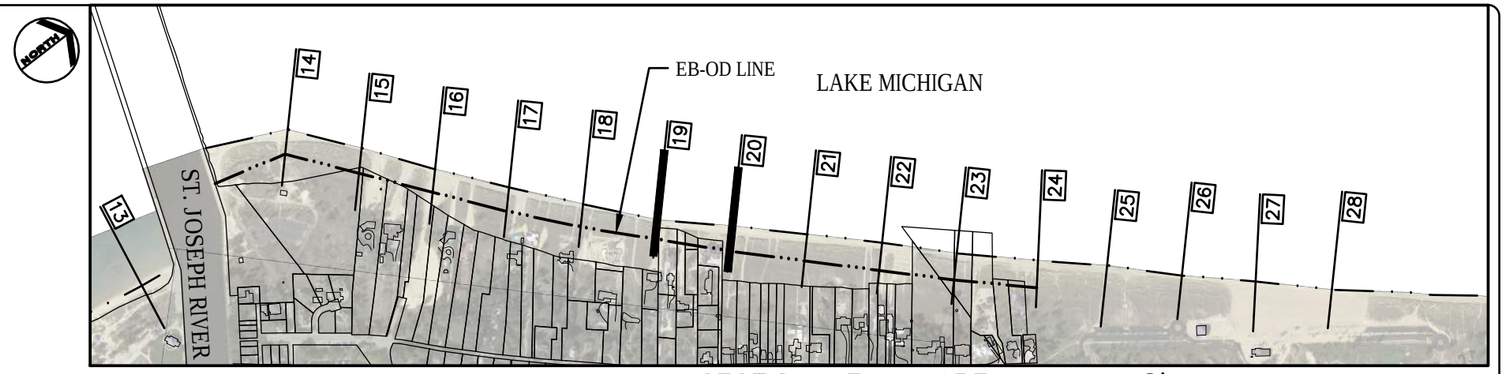
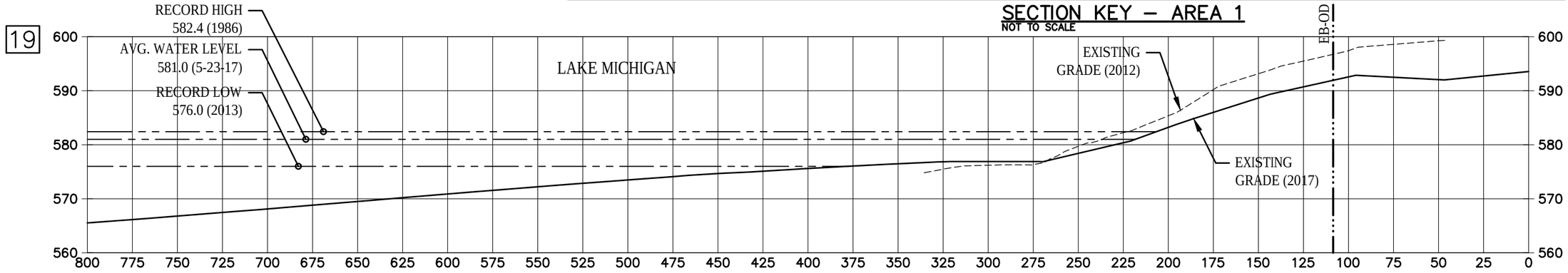
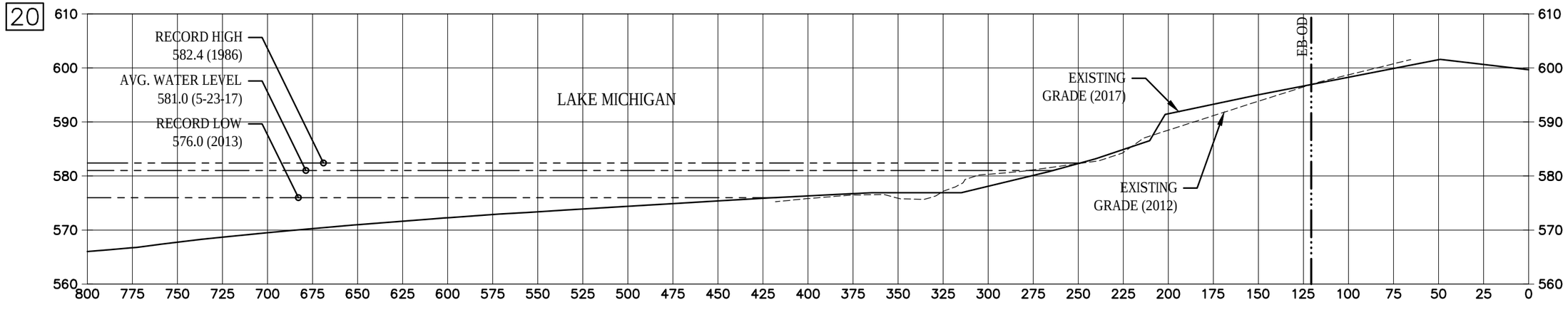
DRAWN BY: DJL
DESIGNED BY: MJR
PM REVIEW: MCM
QA/QC REVIEW: ê
DATE: 12-21-2017
SCALE: HORZ: 1"=60' VERT: 1"=10'
ACI JOB #: 17-0277
SHEET NO.: 9 of 14

NOTES:
1. VERTICAL DATUM IS INTERNATIONAL GREAT LAKES DATUM 1985 (IGLD85).
2. 2017 DATA COLLECTED MAY, 2017.



SECTION KEY – AREA 1
NOT TO SCALE





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Edgewater resources

PROJECT:
CITY OF ST. JOSEPH
COASTAL STUDY
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SHEET TITLE:
SECTION VIEW 19-20
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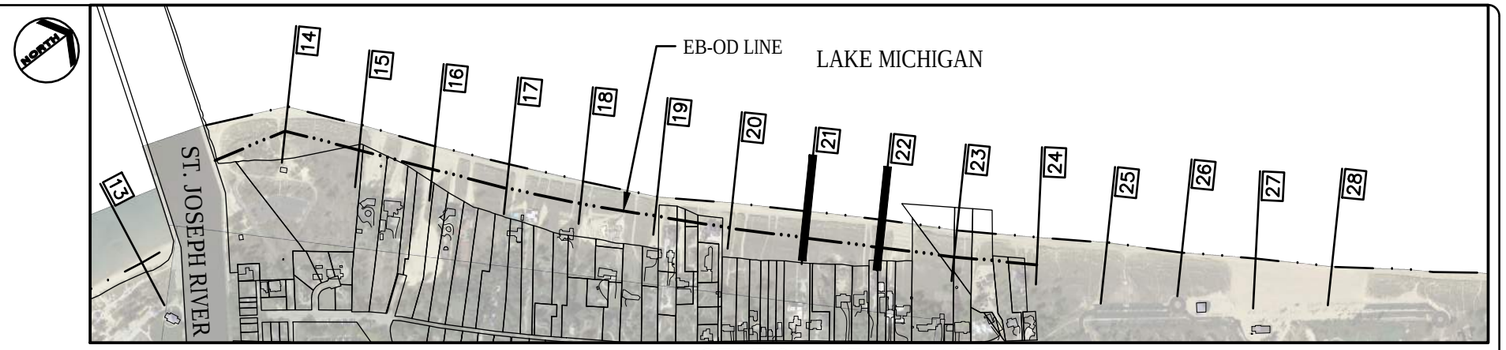
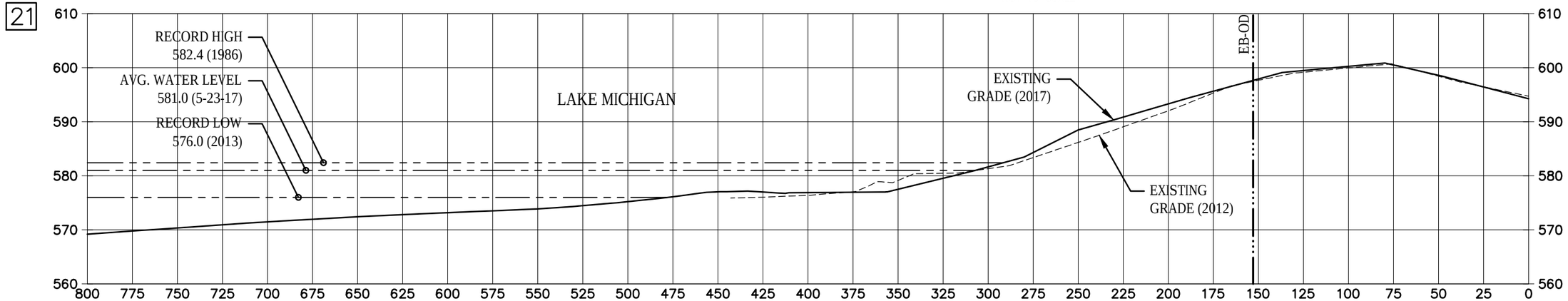
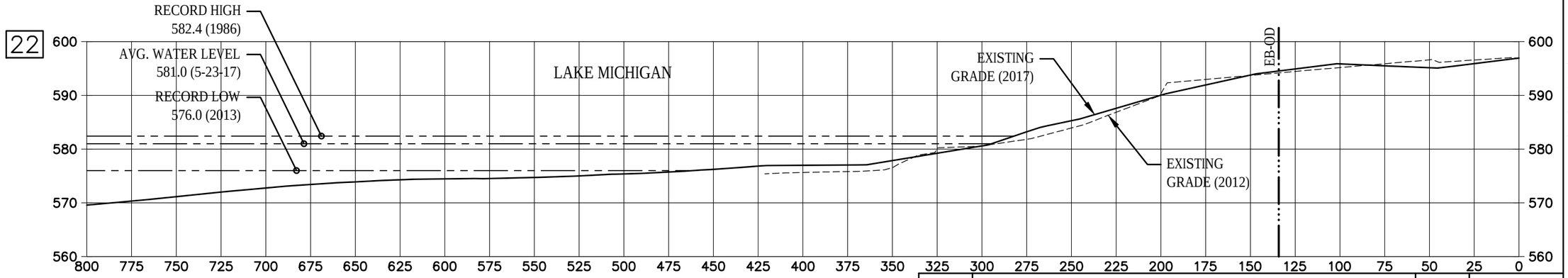
DRAWN BY: DJL
DESIGNED BY: MJR
PM REVIEW: MCM
QA/QC REVIEW: ê
DATE: 12-21-2017
SCALE: HORZ: 1"=60' VERT: 1"=10'
ACI JOB # 17-0277
SHEET NO. 10 of 14

NOTES:
1. VERTICAL DATUM IS INTERNATIONAL GREAT LAKES DATUM 1985 (IGLD85).
2. 2017 DATA COLLECTED MAY, 2017.



SECTION KEY – AREA 1
NOT TO SCALE





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Edgewater resources

PROJECT:
CITY OF ST. JOSEPH
COASTAL STUDY
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SHEET TITLE:
SECTION VIEW 21-22
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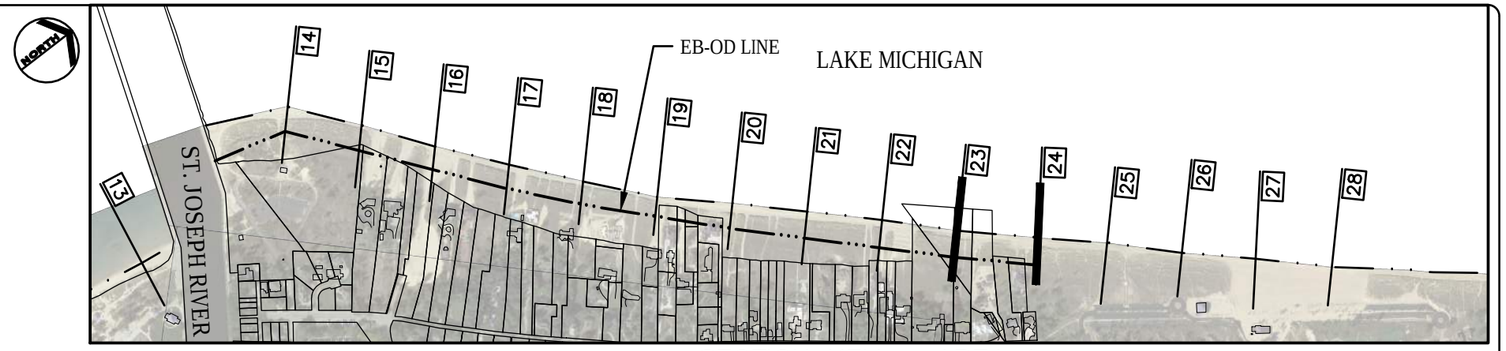
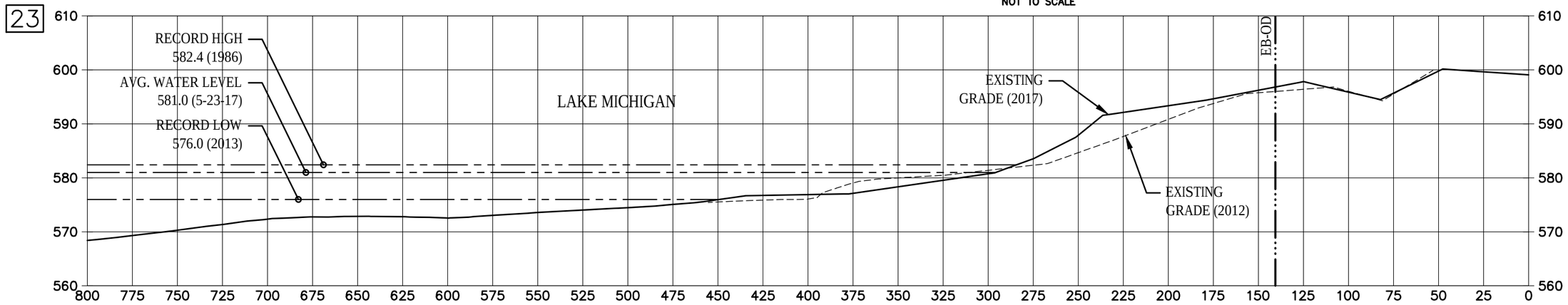
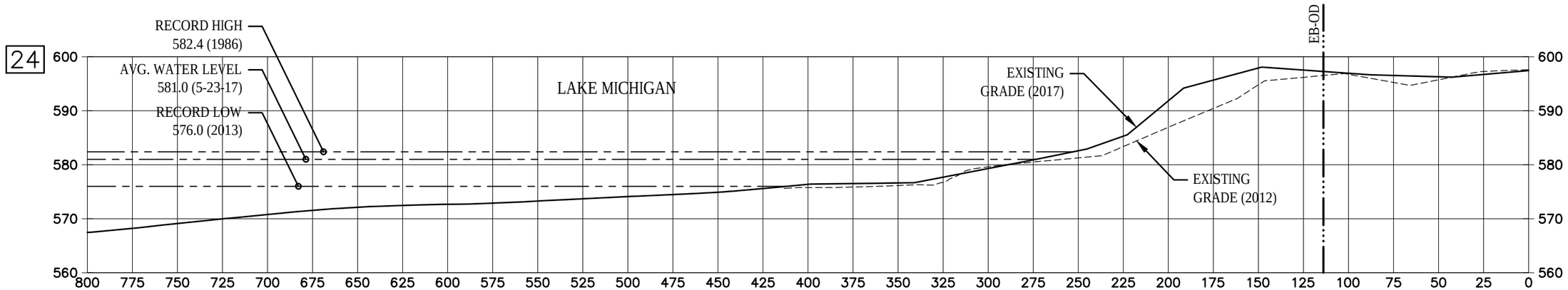
DRAWN BY: DJL
DESIGNED BY: MJR
PM REVIEW: MCM
QA/QC REVIEW: ê
DATE: 12-21-2017
SCALE: HORZ: 1"=60' VERT: 1"=10'
ACI JOB # 17-0277
SHEET NO. 11 of 14

NOTES:
1. VERTICAL DATUM IS INTERNATIONAL GREAT LAKES DATUM 1985 (IGLD85).
2. 2017 DATA COLLECTED MAY, 2017.



SECTION KEY – AREA 1
NOT TO SCALE





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ABONMARCHE
95 West Main Street Benton Harbor, MI. 49023
Edgewater resources

PROJECT:
CITY OF ST. JOSEPH
COASTAL STUDY
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SHEET TITLE:
SECTION VIEW 23-24
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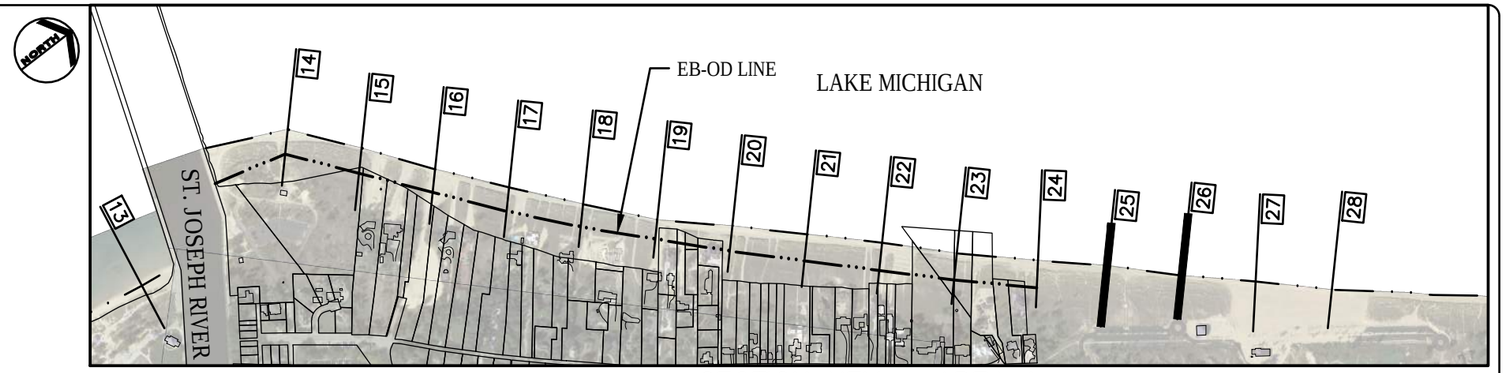
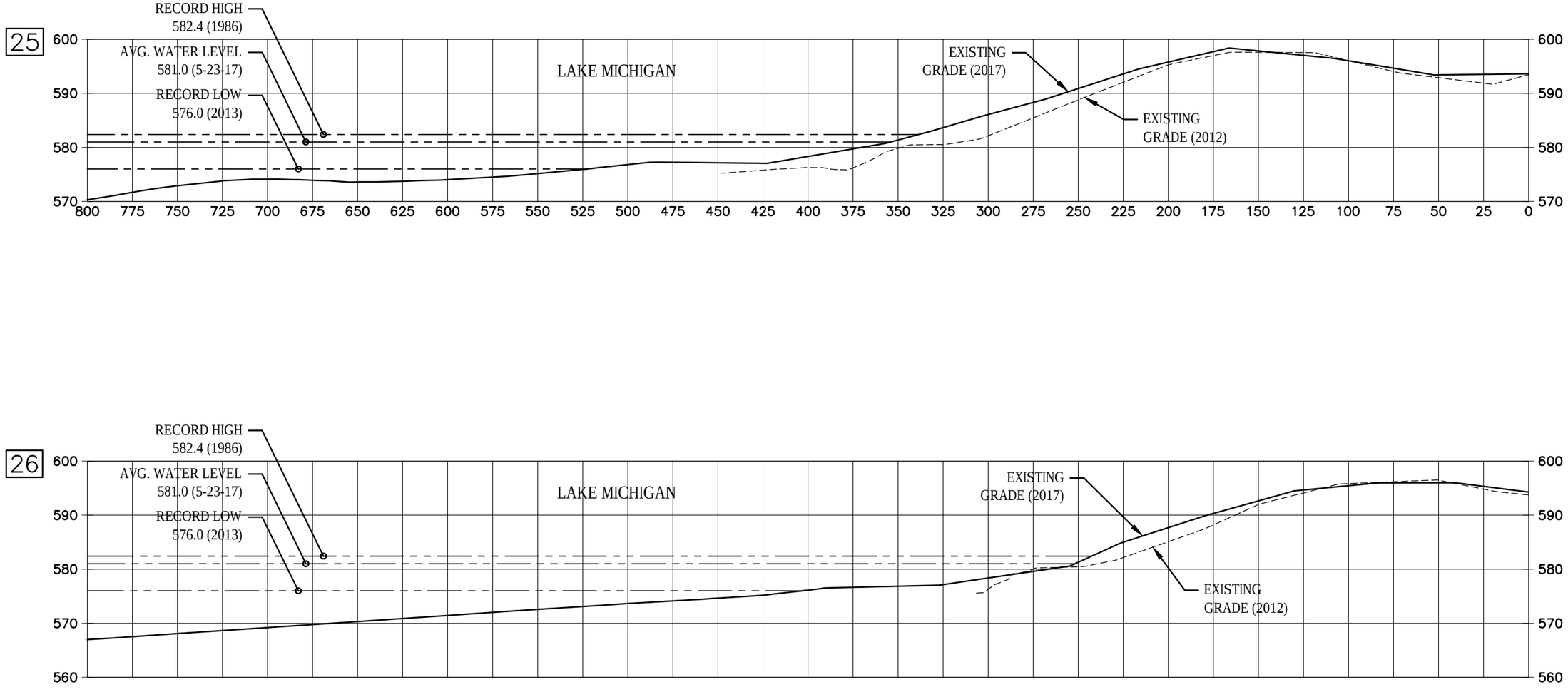
DRAWN BY: DJL
DESIGNED BY: MJR
PM REVIEW: MCM
QA/QC REVIEW: ê
DATE: 12-21-2017
SCALE: HORZ: 1"=60' VERT: 1"=10'
ACI JOB # 17-0277
SHEET NO. 12 of 14

NOTES:
1. VERTICAL DATUM IS INTERNATIONAL GREAT LAKES DATUM 1985 (IGLD85).
2. 2017 DATA COLLECTED MAY, 2017.



SECTION KEY – AREA 1
NOT TO SCALE



NO.	REVISION DESCRIPTION:	BY:	DATE:

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95 West Main Street Benton Harbor, MI. 49023
Edgewater resources

PROJECT:
CITY OF ST. JOSEPH
COASTAL STUDY
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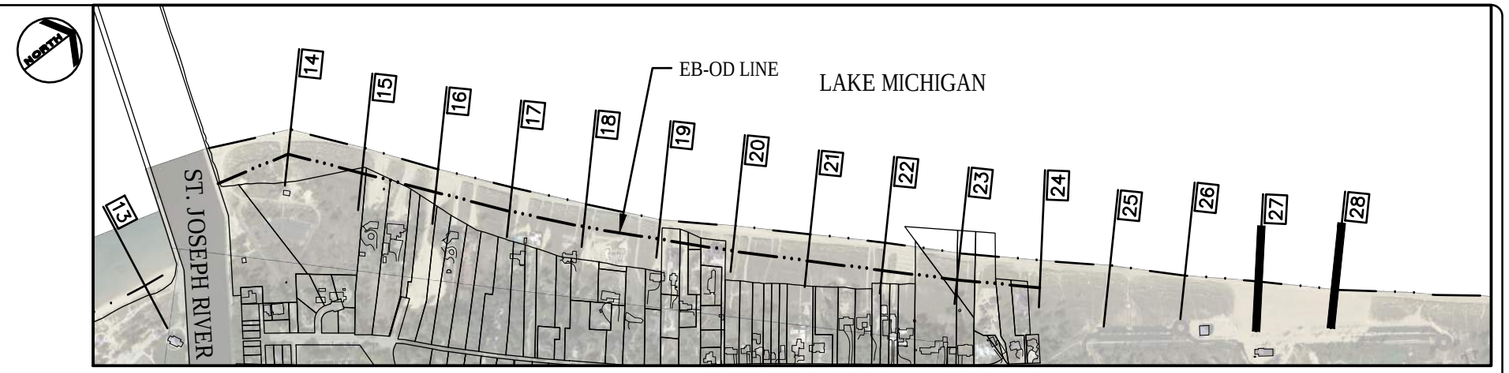
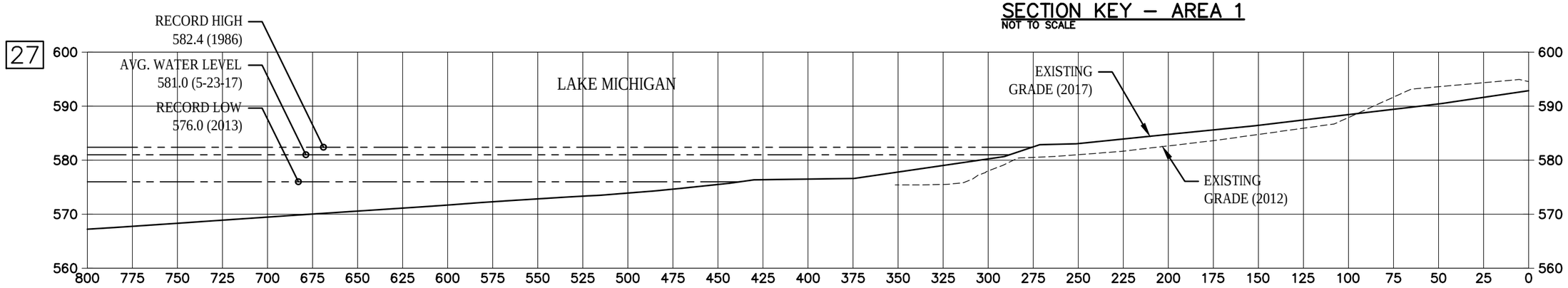
SHEET TITLE:
SECTION VIEW 25-26
ê ê ê

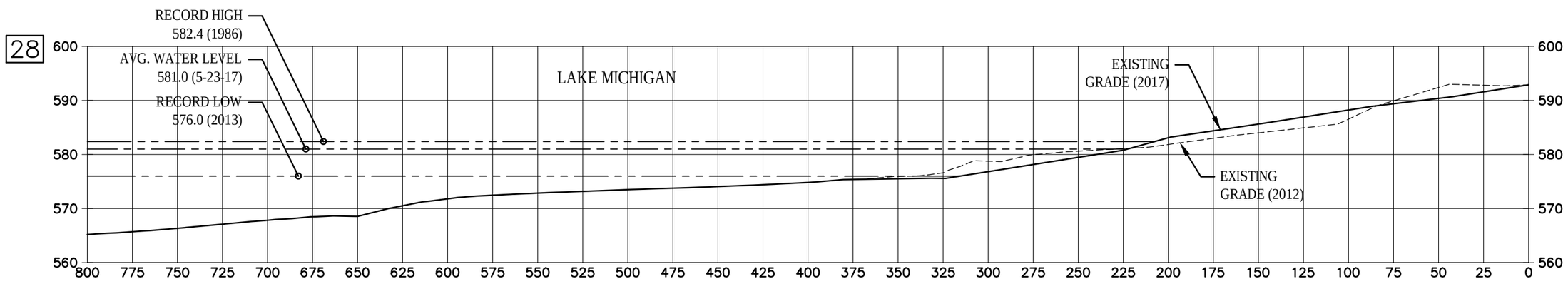
DRAWN BY: DJL
DESIGNED BY: MJR
PM REVIEW: MCM
QA/QC REVIEW: ê
DATE: 12-21-2017
SCALE: HORZ: 1"=60' VERT: 1"=10'
ACI JOB # 17-0277
SHEET NO. 13 of 14

NOTES:
1. VERTICAL DATUM IS INTERNATIONAL GREAT LAKES DATUM 1985 (IGLD85).
2. 2017 DATA COLLECTED MAY, 2017.



SECTION KEY – AREA 1
NOT TO SCALE





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95 West Main Street Benton Harbor, MI. 49023
Edgewater resources

PROJECT:
CITY OF ST. JOSEPH
COASTAL STUDY

SHEET TITLE:
SECTION VIEW 27-28

DRAWN BY: DJL
DESIGNED BY: MJR
PM REVIEW: MCM
QA/QC REVIEW:
DATE: 12-21-2017
SCALE: HORZ: 1"=60'
VERT: 1"=10'
ACI JOB # 17-0277
SHEET NO. 14 of 14